

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BIRD POND ESTATES**

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

WHEREAS, Bird Pond Road Property, LLC, a Texas limited liability company ("BPRP") and John Patton Atkins ("Atkins")(hereinafter BPRP and Atkins are individually and collectively called the "Declarant"), are the owners of that real property in Brazos County, Texas, which is more fully described on Exhibit "A", attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Declarant desires to create and provide for the development and improvement and maintenance of the Subdivision (as defined below) for the mutual benefit and pleasure of the present and future property owners in such Subdivision, and to protect the property values within such Subdivision by imposing upon and against all the designated lots therein the covenants, reservations, restrictions, and other provisions hereinafter set forth;

WHEREAS, the Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth; and

WHEREAS, Declarant desires to create and 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, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens and charges, 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, personal representatives, successors, and assigns, and which shall inure to the benefit of each owner thereof; and (ii) 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 or referred to in said contract or deed.

**ARTICLE I.
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of improvements on the Property.

1.02 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.

1.03 Architectural Reviewer. Architectural Reviewer shall mean the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Committee is the Architectural Reviewer.

1.04 Articles. "Articles" shall mean Articles of Incorporation of Bird Pond Estates Homeowners Association, Inc., as that instrument may be amended from time to time, which instrument is filed in the office of the Secretary of State of the State of Texas.

1.05 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.06 Association. "Association" shall mean Bird Pond Estates Homeowners Association, Inc., a Texas non-profit corporation, which shall have authority and responsibility for all of the communities and subdivisions of Bird Pond Estates, as hereafter defined.

1.07 Bird Pond Estates. "Bird Pond Estates " shall mean one "community", or subdivision, consisting of the Property, known as Bird Pond Estates. The Declarant, or the Board, shall have the authority to declare other tracts subject to the same or similar residential restrictions, and to award membership in the Association to lot owners of other subdivisions, or to merge with other Associations, on terms acceptable to the Board.

1.08 Bird Pond Estates Residential Restrictions. "Bird Pond Estates Residential Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Bird Pond Estates Rules, Architectural Committee rules and the Articles and Bylaws of the Association as the same are in effect from time to time.

1.09 Bird Pond Estates Rules. "Bird Pond Estates Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.10 Board. "Board" shall mean the Board of Directors of the Association. Board members may, but need not be, Members of the Association.

1.11 Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, and from time to time amended.

1.12 Common Areas. "Common Areas" shall mean any land conveyed, leased, dedicated or assigned by Declarant, or by a third party with the Association's consent, to the Association for maintenance and operation, including, but not limited to, easements, roads, entry ways, water detention and drainage, roadways, right-of-way, parkways, median strips, sidewalks, parks, trails, paths, ponds, creeks and lakes within the Property.

1.13 Declarant. "Declarant" shall mean, individually and collectively, BIRD POND ROAD PROPERTY, LLC and JOHN PATTON ATKINS, their duly authorized representatives or their respective heirs, personal representatives, successors or assigns; provided that any assignment of the rights of BIRD POND ROAD PROPERTY, LLC and/or JOHN PATTON ATKINS as Declarant must be expressly set forth in writing and the mere conveyance of a

portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.14 Declarant Control Period. "Declarant Control Period" shall mean that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of (i) ten (10) years from date this Declaration is recorded, or (ii) 60 days after title to seventy five percent (75%) of the Lots that may be created in Bird Pond Estates has been conveyed to owners other than Declarant.

1.15 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

1.16 Development Period. "Development Period" shall mean the ten (10) year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Agreement, such as rights relating to development, construction, expansion, and marketing of Bird Pond Estates. The Development Period is for a term of years and does not require that Declarant own any of the land described in Exhibit "A". The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

1.17 Dwelling Unit. "Dwelling Unit" shall mean any building or portion of a building situated upon the Property which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

1.18 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to buildings, outbuilding, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.19 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a recorded plat of the Property, together with all Improvements located thereon.

1.20 Member. "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights in the Association.

1.21 Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.22 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.23 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any Lot on the Property, but shall not include a Mortgagee.

1.24 Person. "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.25 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such improvement.

1.26 Subdivision shall mean the Bird Pond Estates Subdivision, to be developed on the Property pursuant to the plat(s) recorded in the Official Records of Brazos County, Texas, or such other subdivision(s) made subject to this Declaration after the date hereof in accordance with Section 2.02, as well as any and all revisions, modifications, corrections or clarifications thereto.

ARTICLE II

DEVELOPMENT OF THE PROPERTY

2.01 Development by Declarant. Declarant may divide or subdivide the Property into several areas, develop some of the Property, and , at Declarant's option, sell any portion of the Property free of the restrictions set forth in this Declaration.

2.02 Addition of Land. 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 persons 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 in the Official Records of Brazos County, Texas, a notice of addition of land containing the following provisions:

- (A) A reference to this Declaration, which shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- (B) A statement that the provisions of this Declaration shall apply to the added land; and
- (C) A legal description of the added land.

2.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of withdrawal of land containing the following provisions:

- (A) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded.
- (B) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (C) A legal description of the withdrawn land.

2.04 Development Purpose. Because the Lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the Lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Agreement is to promote and ensure the level of taste, design, quality, and harmony by which Bird Pond Estates is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to the existing Improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing Improvements on a Lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Agreement is to reserve and preserve Declarant's right of architectural control.

2.05 Development Period Reservations. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

- (A) **Amendment.** During the Development Period, Declarant may amend this Declaration, without consent of other owners or any mortgagee, for any purpose.
- (B) **Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the Common Area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of Bird Pond Estates, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.
- (C) **Access.** During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing Bird Pond Estates, and for discharging Declarant's obligations under this Declaration.
- (D) **Utility Easements.** During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any Lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone,

television, cable, internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the Lot owner.

ARTICLE III. GENERAL RESTRICTIONS

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

3.01 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee. In addition, all Improvements to be located on a Lot, and the development necessary to incorporate such Improvements on the Lot, shall be constructed and completed by an Owner and its contractor(s) in compliance with all applicable laws, ordinances, rules and regulations of the City of College Station, Brazos County, Texas and any other governmental unit having jurisdiction over the Subdivision, all at the sole cost and expense of such Owner.

3.02 Antennae and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without the prior written approval of the Architectural Committee, and under no circumstances shall any antennae be approved which is visible from any public street. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot so as to unreasonably interfere with the reception of television or radio signals on any other Lot. Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 ("the Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

3.03 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the Board.

3.04 Subdividing. No Lot shall be further divided or subdivided, neither may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

3.05 Signs. No sign of any kind shall be displayed to the public view on the Property without the prior written approval of the Architectural Committee, except for signs which are part of Declarant's overall marketing plan for the Property. The Architectural Committee may permit signs of any type advertising a portion of the Property for sale or lease or it may set standards for the same.

3.06 Rubbish and Debris. 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 therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants. Refuse, garbage and trash shall be kept at all times in

covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot. Owners must maintain all portions of their Lots in a neat and clean condition.

3.07 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.08 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Committee.

3.09 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement of any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

3.10 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

3.11 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any Improvement which in any way alters the exterior appearance of said Improvement shall be performed with the prior written approval of the Architectural Committee.

3.12 Roofing Materials. The surface of all roofs of principal and secondary structures shall be wood, shingle, shakes, tile or quality composition shingle. The Architectural Committee shall have authority to approve other roof treatments and materials when in its sole determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

3.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the Architectural Committee and approval from the Architectural Committee of such design, including the aesthetics thereof, shall be required before construction may begin.

3.14 Driveway and Garage. Each Dwelling Unit on a Lot must have at a minimum a two (2)-car garage. All driveways on a Lot must be constructed with a hard surface material of asphalt or concrete. The Architectural Committee shall have the right to impose limitations on driveway and garage design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property, but no front entry garages shall be permissible.

3.15 Tanks. 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 LPG tanks

shall be buried underground. All tanks shall be screened with a hedge of evergreen plants so as not to be visible from any other portion of the property.

3.16 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the Architectural Committee; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of improvements which have been previously approved in writing by the Architectural Committee. The installation method, including but not limited to location, type of installation equipment trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the Architectural Committee.

3.17 Drainage. There shall be no interference with the established drainage patterns of the Property, except by Declarant, unless adequate provision is made for property drainage and approved by the Architectural Committee.

3.18 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

3.19 Mining and Drilling. 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. This paragraph does not prohibit the pooling of all or part of the Subdivision with other property for drilling of horizontal or slant hole wells, which do not interfere with the use of the surface of the Property. Except for facilities and activities necessary for the proper use and maintenance of a governmentally approved residential septic system, no well, pump, shaft, casing or other facilities for the removal of subsurface waters shall be placed or maintained on any Lot, and no boring, drilling, removal of, or exploitation for, subsurface water or the injection of water or waste water shall be conducted on any Lot.

3.20 Machinery and Equipment. Without the approval of the Association, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by a public utility, in the performance of its legitimate functions.

3.21 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for

architects, builders and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures.

3.22 Unightly Articles; Vehicles. No trailer, mobile home, eighteen (18) wheeled tractor trailer trucks, equipment, machinery, recreational vehicle, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front yard in front of the building line of the permanent structure, and same shall be kept, parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street.

3.23 Fences. All fences must be approved by the Architectural Committee prior to their construction on the Property. No fence, wall, or hedge shall be built or maintained forward of the front wall line of the main structure, and which are not to be built or maintained nearer than the building setback line of any lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24") above the ground. Notwithstanding the foregoing, the Architectural Committee is empowered to waive the aforesaid height or setback limitation in connection with retaining walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting retaining wall will not detract from the general appearance of the neighborhood. No chain-link or privacy fences may be built or maintained on any Lot. Privacy hedges are permissible.

3.24 Animals – Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property; provided, however, on Lots greater than two (2) acres in size, Owner may possess one (1) horse per acre with no more than a maximum of three (3) horses on any such Lot. No swine may be kept or maintained on any Lot. There will be no wild, exotic, or naturally undomesticated animals allowed to be caged or otherwise kept on any Lot. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than two (2) adult dogs and two (2) adult cats may be kept on a single lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances. In the event any animal creates a nuisance to the Subdivision, in the sole and exclusive opinion, of the Architectural Committee such animal will be removed from the Subdivision. The Architectural Committee shall have the right to enter and remove any such animal which is placed on any Lot in violation of this Section, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

3.25 Stables. Stables for the shelter of horses may be constructed on lots larger than two (2) acres, subject to the following conditions:

All stables shall comply with all other restrictions, covenants, conditions and limitations on usage herein provided for other Improvements in the Subdivision, except that, subject to the Architectural Committee approval, stables may be constructed of materials other than masonry if the sole discretion of the Architectural Committee, the quality of materials, design, and method of construction is compatible with and of a standard equal to other stables in the Subdivision, or to be built in the Subdivision.

3.26 Playscapes. Colored playscapes, trampolines, or similar items, hot tubs, spas, or similar items (unless incorporated into an in-ground pool) are prohibited unless shielded from the view of roadways and other Lots or properties. Natural wood playscapes may be approved upon application to the Architectural Committee, showing materials of construction and location on the Lot.

3.27 Maintenance of Lawns and Plantings. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Subject to Section 3.29 below, trees, shrubs, vines and plants that die shall be promptly removed. Declarant, the Association and the Architectural Committee shall have the right at any reasonable time after not less than four (4) days notice to Owner to cure any violation of this provision within such 10-day period, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot as provided in section 5.05(E) below.

- (A) Wherever possible, save and incorporate into the Plans and Specifications existing trees and trunk diameters of four (4) or more inches. To insure the viability of these trees, soil compacting, trenching and/or cut and fill shall be avoided, to the greatest extent possible, in the area defined by trees' dripline.
- (B) Maintain or enhance, wherever possible, existing vegetation within drainage easement to prevent erosion, siltation or impediment of runoff augmented by development.
- (C) Install live, growing sod covering the front and side yards, within thirty (30) days of occupancy of any residence constructed on a Lot, and an equivalent substitute which achieves as satisfactory a ground cover in approximately the same period of time in the backyard, all such ground cover to be indigenous to the area, and maintained in a healthy and growing condition.
- (D) Install live, growing and healthy shrubs, bushes, vegetation and trees in the front yard on the Lot, within thirty (30) days of occupancy of any residence constructed on a Lot, which have a retail value for materials and labor equal to at least \$500.00. Existing indigenous shrubs, trees, bushes and vegetation shall not be included within this requirement, nor shall ground cover, mulch, grass, or bed preparation. The Association may cure any default of this covenant in the manner provided in Article V hereof.

3.28 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant election and site design. All landscaping designs

shall install live, growing sod covering the front, side and backyards, within thirty (30) days of occupancy of any residence constructed on a Lot, and shall maintain it in a healthy and growing condition. All front, side and back yards within fifty (50) feet of the Dwelling Unit must be irrigated with automatic sprinkler systems and have landscaping acceptable to the Architectural Committee. Areas outside of fifty (50) feet of the Dwelling Unit may be maintained as a pasture or natural areas so long as said pasture or natural area is maintained in an attractive manner. At all times after improvements are constructed on any Lot, the Owner of such Lot shall keep and maintain at least three (3) living trees with diameters of two (2) inches in the front yard of a Lot. No live trees with a diameter of six (6) inches or greater located within the zone between property line and set back line shall be removed from a Lot without the approval of the Architectural Committee. Notwithstanding the foregoing, the Architectural Committee may approve any deviation or variance from these requirements of this section.

3.29 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the scale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provide that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. Exposed openings resulting from excavation made of any Lot shall be back filled and disturbed ground shall be leveled and reseeded with fiber mulch, blanket seeding, or sodding. No change of elevation on any Lot greater than five feet (5') shall be made without prior approval of the Architectural Committee. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

3.30 Mailbox. Mailboxes shall be erected and maintained on each Lot upon which a residence is situated, and shall be fixed on masonry stanchions (columns), approved by the Architectural Committee. The design, construction and location of any mailbox stanchion on a Lot must have the prior written approval of the Architectural Committee and comply with all applicable governmental standards and requirements. No metal post stands shall be permitted. Each mailbox shall be new when installed, constructed of durable steel or aluminum, and of a size and shape conforming to postal authority standards for single family residential postal depositories.

3.31 Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located forty (40') feet from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the Architectural Committee. Measurement shall be by chord, not by arc. No tree shall be permitted to remain within such areas, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

3.32 Garage conversions. No garage, or any portion thereof, may be converted into enclosed living space unless an alternative garage of at least equal size is constructed and the plans and specifications for the conversion and construction are first approved in writing by the Architectural Committee.

3.33 Stormwater Management. Owners and their contractors shall be responsible for the management of stormwater during construction or ground disturbing activities to prevent erosion and sedimentation from leaving the immediate construction site or entering into any existing or contemplated waterway, drainageways, and roadside ditches. During construction of a Dwelling Unit, Improvement, foundations, driveways, barns, approved landscape areas, or any other construction requiring soil grading activities, Owners and their contractors and agents must use appropriate stormwater management measures, such as silt fencing or hay bales between the construction area and drainageways. Final stabilization with seeding or mulch is required to minimize erosion following construction. Owner is fully responsible for the erosion drainages and/or drainage ways on Owner's Lot and for complying with all rules, regulations, laws and requirements of all applicable regulatory agencies relating to stormwater and ground disturbing activities. An Owner, at such Owner's expense, shall, promptly and to the Association satisfaction, correct and repair any damage to any drainage structure on Owner's Lot and/or on the Property caused by the Owner or the Owner's contractors or subcontractors. Owners shall maintain and repair all drainage ways on Owner's Lot to their original condition after construction is completed.

3.34 Swimming Pools. No above-ground swimming pool may be erected on any Lot. Swimming pools built into the ground are Improvements subject to approval by the Architectural Committee under Article VI. No swimming pool may be constructed on a Lot between the forward boundary of the Dwelling Unit on such Lot and the access road for such Lot. The Lot Owner shall secure all necessary approvals, certificates and/or permits as may be required by law or ordinance in connection with the construction and operation of a swimming pool. All swimming pool servicing equipment shall be screened or fenced as approved by the Architectural Committee.

3.35 Room and Board Plans. No Owner shall permit any Lot or Improvement on any Lot to be used in whole or in part by tenants on rooming or boarding plans or contracts, or both, of any type.

3.36 Septic System Requirements. No residential Dwelling Unit shall be built without a State of Texas, Brazos County, or other required governmentally approved septic tank or other sewage disposal system that is so approved.

3.37 Basketball Goals. No basketball goals will be placed in the street or in the driveway between street and front of the residence.

3.38 Compliance with Provisions of Bird Pond Estates Residential Restrictions. Each Owner shall comply strictly with the provisions of the Bird Pond Estates Residential Restrictions as the same may be amended from time to time. Failure to comply with any of the Bird Pond Estates Residential Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these

covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

3.39 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article III or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to the extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE IV. RESIDENTIAL RESTRICTIONS

4.01 Residential Use. All Lots shall be improved and used solely for residential purposes inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family and guests. All Lots within the Property shall be used and improved solely for single family residential purposes, with no more than one (1) attached residential Dwelling Unit per Lot. Anything herein to the contrary notwithstanding, any Lot may be used or improved for greenbelt, open space and/or drainfield purposes. No Improvement may be constructed upon any Lot that would unreasonably obstruct the view from other portions of the Property, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to Architectural Committee review. The Architectural Committee may, but shall not be required to, prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot. The Architectural Committee may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the Architectural Committee nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots.

4.02 Outbuildings. Every outbuilding, inclusive of such structures as a detached garage, storage building or greenhouse, shall be compatible with the Dwelling Unit to which it is appurtenant in terms of its design and material composition. All such buildings shall be subject to approval by the Architectural Committee. In no instance shall an outbuilding, other than a detached garage, exceed one (1) story in height or have total floor area in excess of twenty percent (20%) of the floor area of the main dwelling.

4.03 Building Height. No Improvement greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

4.04 Building Materials; Dwelling Size. All single family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed at least ninety percent (90%) masonry or other material specifically approved in writing by the Architectural Committee. Masonry includes ceramic tile,

brick, rock and all other materials commonly referred to in the College Station, Texas area as masonry. Unless an exception is granted by the Architectural Committee, all single family dwellings shall contain not less than three thousand (3,000) square feet of enclosed living space for dwellings constructed on lots in all cases exclusive of porches (open or covered), decks, garages and carports. Each residence shall include an enclosed attached or detached garage or other structure sufficient to meet the requirements of Sections 3.14 and 3.22 above.

4.05 Construction in Place. The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed.

4.06 Set-back Requirements. No building shall be located or erected nearer to any Lot line bordering a street right-of-way than the building line shown on the recorded plat of the Property subdivision section which includes such Lot. No building shall be located nearer than twenty (20) feet to any interior side Lot lines. No building shall be located nearer than twenty (20) feet from any rear Lot line. Notwithstanding the foregoing, in respect to cul-de-sac Lots or Lots having irregular shapes, such building must be situated at a mean distance of at least twenty (20) feet from each side property line of such Lot, but in no event closer at any one point than twenty (20) feet from such side property lines. Furthermore, on such cul-de-sac Lots or Lots having irregular shapes, such structure may be constructed as near as twenty-five (25) feet from the rear of the Lot. For purposes of these covenants, the eaves of buildings shall not be deemed to be part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure. This Section shall not be construed to allow any building or structure to encroach upon another Lot.

**ARTICLE V.
BIRD POND ESTATES OWNERS ASSOCIATION**

5.01 Declarant Control Period Reservations - Governance. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

- (A) **Incorporation of Association.** Declarant will incorporate the Association as a Texas nonprofit corporation before the end of the Declarant Control Period.
- (B) **Officers & Directors.** During the Declarant Control Period, the Board may consist of 3 persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as provided in Section 5.09 herein. Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by lot owners other than Declarant, as well as to Declarant's appointees.
- (C) **Association Meetings.** During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the owners.
- (D) **Transition Meeting.** Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a transition meeting of the members of the Association for the purpose of electing, by vote of the owners, directors to the Board. Written notice of the transition meeting must be given to an owner of each Lot at least 10 days before the meeting. For the transition

meeting, owners of 10 percent of the Lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors.

5.02 Organization. Before the end of the Declarant Control Period, Declarant will cause the formation and incorporation of the Association as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in the Declaration. Neither the Articles nor bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.03 Membership. Any Person or entity upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the said property interest.

5.04 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of directors to the Board on all other matters to be voted on by the Members shall be calculated as follows: The Owner, whether one or more (including Declarant), of each Lot within the Property shall have one vote for each Lot so owned.

5.05 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further 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 two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers and authority at all times:

- (A) Bird Pond Estates Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Bird Pond Estates Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonable necessary or appropriate to carry out Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy Assessments as provided in Article VII below.
- (E) 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 Improvement thereon for the purpose of enforcing the Bird Pond Estates Residential Restrictions or for the purpose of erecting, maintaining or repairing any Improvement to conform to the Bird Pond Estates Residential Restrictions, and the expense thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot

entered on and Improvements thereon, an 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 name and on its own behalf, or in the name of an on behalf of an Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Bird Pond Estates Residential Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Bird Pond Estates Residential Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

- (F) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the operation of the Association.
- (G) Delegation to Committees. To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.
- (H) Employees. To engage in such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

5.06 Landscape and Maintenance. The Association shall be authorized to landscape, maintain and repair easements, right-of-way, common areas, entry ways, sidewalks, paths, trails, detention ponds, lakes, and other areas of the Property, as appropriate.

5.07 Common Areas.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
 - (1) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with any Improvements of any kind or purpose located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association, whether by Declarant or by other Persons.
 - (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association to the extent that such taxes and assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
 - (3) To execute mortgages, both construction and permanent, for construction of improvements on property owned by or leased to the Association, and to accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of

trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any borrower, whether Declarant or the Association, on the Improvement to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration.

(B) In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 5.05 of this Declaration, the Association, acting through the Board, shall have the power and authority:

- (1) To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining the following:
 - (a) Parks, parkways or other recreational facilities or structures;
 - (b) Roads, street, walks, driveways, trails and paths;
 - (c) Lines, cables, wires, conduits, pipelines or other means of providing utilities;
 - (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
 - (e) Any similar public, quasi-public or private Improvements.

Nothing contained in this Subparagraph, however, shall be construed to permit use or occupancy of any Common Area or Improvement in a way that would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration, or by any use and occupancy restrictions imposed by other provisions of this Declaration, or by any statute, rule, regulation, ordinance or other law of any governmental entity, including but not limited to rules and orders of the Texas Water Development Board, Texas Water Commission, and any flood plain, industrial waste or other ordinance of the City of College Station.

- (2) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association.

- (3) To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- (4) To own and operate any and all types of facilities for both active and passive recreation.
- (5) To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Committee as required in this Declaration.
- (6) To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any of the Common Areas or to provide any service or perform any function on behalf of Declarant or the Association in connection with the purposes of the Association.
- (7) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.
- (8) To merge with other associations having the same or similar purposes and objectives, or terms acceptable to the Board.

5.08 Agreement with City of College Station, and County of Brazos. The Declarant, as the agent of the Association, or the Association, may enter into one or more agreements with the City of College Station or State of Texas or both, with respect to the landscaping and maintenance of portions of street right of way, or the dedication of any drainage basin, park or other common area within the property for municipal maintenance. The Association shall accept, without further requirement or documentation, said agreement and the requirements and benefits associated therewith, for any agreement reached by the Declarant.

5.09 Indemnification. The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who was, is, or is threatened to be made a named defendant or respondent in any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding") by reason of the fact that such person is or was a director, officer or member of such a committee of the Association, against all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

**ARTICLE VI.
ARCHITECTURAL COMMITTEE**

6.01 Architectural Control During The Development Period. During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes on vacant lots. During the Development Period, the Architectural Reviewer for new homes on vacant lots is the Declarant or its delegates.

(A) Declarant's Rights Reserved. Each Lot owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within Bird Pond Estates enhance Declarant's reputation as a community developer and do not impair Declarant's ability to sell homes in the Property. Accordingly, each owner agrees that, during the Development Period, no Improvements will be started or progressed on owner's Lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

(B) Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) a modifications or architectural committee appointed by Declarant or by the Board, (2) a modifications or architectural committee elected by the Lot owners, or (3) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

6.02 Architectural Control and Membership of Architectural Committee. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Committee, or the Development Period is terminated or expires, neither the Association nor the Architectural Committee has any jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Architectural Committee will assume jurisdiction over architectural control in the Subdivision. At which time, the Architectural Committee shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate.

6.03 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

6.04 Advisory Members. The Voting Members may from time to time designate Advisory Members.

6.05 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.

6.06 Declarant's Rights of Appointment. Until the end of the Development Period unless terminated sooner by Declarant, Declarant, its successors or assigns shall have the right to appoint and remove all Voting Members of the Architectural Committee, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Declarant may delegate its right of appointment, or any portion thereof, to the Board by written instrument before such date. Whenever the end of the Development Period occurs, the Board shall have the right to appoint all Voting Members. At such time as the Board gains the right to appoint and remove Voting Members of the Architectural Committee, or any portion of this right, a majority of the Voting Members so appointed shall be drawn from Members of the Association. Advisory Members shall, when reasonable possible, be drawn from Members of the Association.

6.07 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes.

6.08 Review of Proposed Construction. 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 therefore 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. The Architectural Committee may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The Architectural Committee may, but shall not be required to, disapprove any improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. 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 the residential development within the Property and 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.

6.09 Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

6.10 No Waiver of Future Approvals. 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.

6.11 Work in Progress. The Architectural Committee may at its option inspect all work in progress to insure compliance with approved Plans and Specifications.

6.12 Nonliability of Architectural Committee Members. 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 the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to this construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.

6.13 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of Pete Catalena, 2908 Finfeather Road, Bryan, Texas 77801, or in care of such other person at such other address as may be designated by Declarant or the Board, as the case may be, from time to time.

6.14 Failure to Act. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications within ten (10) days after the same have been submitted to it, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed.

6.15 Variances. Notwithstanding any other provision of the 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.

6.16 Governmental Agency Approval. Nothing in this Declaration shall be construed to relieve any Owner for securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.

6.17 Relationship with Association. The Architectural Committee has been created pursuant to this Declaration to perform certain functions specified herein in relation to the review

and approval of Plans and Specifications for Improvements built on the Property. The Architectural Committee does not exercise the authority of the Board, and shall not do so unless and until (i) the Board shall have duly appointed a majority of Board members to the Architectural Committee, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the Architectural Committee and committee of the Board in accordance with the Texas Non-Profit Corporation Act.

ARTICLE VII.
FUNDS AND ASSESSMENTS

7.01 Declarant Control Period Reservations - Financial. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

- (A) Association Budget. During the Declarant Control Period, the Declarant-appointed board will establish a projected budget for Bird Pond Estates as a fully developed, full constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.
- (B) Budget Funding. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's actual operating expenses and the regular assessments received from Lot owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from owners other than Declarant.
- (C) Declarant Assessments & Reserves. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the lots owned by Declarant. Declarant's obligation to fund the difference in the Association's operating expenses may not be construed to require Declarant to fund reserve accounts.
- (D) Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular assessments against the lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.
- (E) Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

- (F) Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

7.02 Assessments. Except as provided in Section 7.01 above,

(A) The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Declarant.

(B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

(C) 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.

7.03 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association 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.

7.04 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Bird Pond Estates Residential Restrictions, including but not limited to the cost of all entry ways, landscaping, greenbelts, common areas, median strip, and right-of-way maintenance, the cost of enforcing the Bird Pond Estates Residential Restrictions, and a reasonable provisions for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

7.05 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out in mandatory functions of the Association under the Bird Pond Estates Residential Restrictions. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board.

7.06 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 in Section 7.02(A) hereof, 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.

7.07. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but paid, shall, together with interest as provided in Section 7.06 hereof 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 on either instant 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 for the 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 for longer than thirty (30) days after due.

7.08. The terms of this Article VII are subject to the requirements of Chapter 209, Texas Property Code, as amended from time to time (the "Code").

ARTICLE VIII. EASEMENTS

8.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the property and all grants and dedications of easements, right-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on

behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and right-of-way for the purpose of most effectively, efficiently and economically developing and marketing the property. Further, Declarant reserves the right, without the necessity of the joinder of any owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, common areas, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of seven and one-half (7-1/2) feet on each side of such Lot line.

8.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot.

8.03 Surface Areas. The surface of easement areas for underground utility services may be used for planting shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonable relating to the construction, maintenance, operation or repair of any facility in any such easement area.

8.04 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Architectural Committee.

8.05 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Area for the purpose of enforcing the Bird Pond Estates Residential Restrictions in accordance with Section 5.05(E) hereof, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the common Areas to effectuate the foregoing purposes shall not be deemed as trespass.

ARTICLE IX. MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until January 1, 2047, unless amended as herein provided. After January 1, 2047, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive period of ten (10) years each, unless amended as provided in Section 9.03 below or terminated by a written instrument executed by the Owners of

at least three-fourths (3/4) of the Lots within the property then subject to this Declaration, filed of record in the Official Records of Brazos County, Texas.

9.02 Dissolution. Upon termination of this Declaration in accordance with Section 9.01 above, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

9.03 Amendment.

(A) By Declarant. This Declaration may be amended by the Declarant, acting alone, until December 31, 2017, and thereafter for so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the Secretary of the Association, certifying that the Declarant had the requisite number of votes.

(B) By Owners. In addition to the method in Section 9.03 (A), after December 31, 2017, this Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to cast pursuant to Section 5.04 hereof.

9.04 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.05 Severability. The invalidity, violation, abandonment, waiver of or failure to enforce any one or more of or any part of the provision of this document shall in no way effect or impair the remaining provisions or parts thereof which shall remain in full force and effect.

9.06 Deviations. Declarant reserves the right to make minor deviations from the terms of this document to the extent permissible by law and consistent with the general plan for development as herein set out.

9.07 Assignment by the Association. The Association shall be empowered to assign its rights, or any part hereof, to any successor entity, and upon such assignment, the successor entity shall have those rights and be subject to those duties of the Association assigned thereby. The successor entity shall be bound by this Declaration to the same extent as the Association. Any such assignment shall be accepted by the successor entity under a written agreement pursuant to which the successor entity expressly assumes the duties and obligations of the Association thereby assigned. If for any reason the Association shall cease to exist without having first assigned its rights and obligations hereunder to a successor entity, the covenants,

restrictions, easements, charges and liens imposed by this Declaration shall nevertheless continue; and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a nonprofit membership corporation and assigning the rights of the Association hereunder to said corporation with the same force and effect, and subject to the same conditions, as provided in this Section 9.07 with respect to an assignment by the Association to a successor entity.

9.08 No Warranty of Enforceability. While Declarant has no reason to believe that any of the sections, terms, or provisions in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such sections, terms, or provisions. Any Owner acquiring a portion of the Property shall not be entitled to do so in reliance on the enforceability or validity of any one or more of such sections, terms, or provisions of this Declaration and shall assume and does assume all risks of the validity and enforceability thereof and, by acquiring a portion of the Property, agrees to hold Declarant harmless therefrom.

9.09 Time is of the Essence. In regard to the acts, duties, obligations, or responsibilities to be performed by any Member or Owner pursuant to this Declaration, time is of the essence as to such performance.

9.10 Maximum Interest Payable. In all events where interest is due and payable on any obligation pursuant to the provisions of this Declaration, the person to whom such payment is due shall never be entitled to receive, collect or apply as interest on such indebtedness any amount in excess of the highest rate allowed by law. In the event the payee of such indebtedness ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be credited against the principal of the indebtedness and, if the indebtedness has been paid in full, any remaining excess shall forthwith be refunded to the payor thereof and, in such event, the payee shall not be subject to any penalties provided by law for contracting for, charging or receiving interest in excess of the highest rate allowed by law.

9.11 Replatting. Declarant shall have the right to replat or subdivide any Lots owned by it by recorded plat or in any other lawful manner.

9.12 Attorney in Fact for Atkins. Atkins, for himself, his heirs, successors and assigns, hereby appoints BPRP as Atkins' true and lawful attorney-in-fact, coupled with an interest and irrevocable, for BPRP's use and benefit, to take the following actions for Atkins and in Atkins' name, place and stead: to do and perform each and every act permitted or required to be performed by Declarant in this Declaration. The rights, powers and authority of BPRP to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Brazos County Clerk's Office and shall remain in full force and effect thereafter until the earlier to occur of the following: (i) BPRP and Atkins no longer have the right to exercise such rights as "Declarant" pursuant to the terms of this Declaration; or (ii) BPRP resigns as the lawful attorney-in-fact for Atkins by filing a written notice of such effect in the Official Records of Brazos County, Texas; provided, however, (1) BPRP shall not under any circumstances be obligated to perform any obligation of Atkins; and (2) BPRP shall not be liable to Atkins or any other person or entity for any failure to take any action which it is empowered to take under this Section. The rights, powers and authority of BPRP to exercise any and all of the rights and powers herein granted shall survive the incompetency and death of Atkins and shall be binding upon his legal representatives, administrators, executors, heirs, successors and assigns.

Dated this the 21 day of December, 2007.

DECLARANT:

BIRD POND ROAD PROPERTY, LLC

By: [Signature]
Cody Catalena, Manager

By: [Signature]
Pete Catalena, Manager

[Signature]
JOHN PATTON ATKINS

STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the 21st day of December, 2007 by Cody Catalena, Manager of Bird Pond Road Property, LLC, a Texas limited liability company, on behalf of said limited liability company.

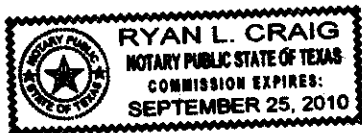


[Signature]
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the 21st day of December, 2007 by Pete Catalena, Manager of Bird Pond Road Property, LLC, a Texas limited liability company, on behalf of said limited liability company.



[Signature]
Notary Public, State of Texas

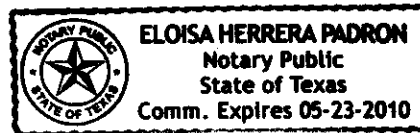
STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the 21 day of December, 2007 by John Patton Atkins.


Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Cody Catalena
2908 Finfeather Road
Bryan, Texas 77801



**METES AND BOUNDS DESCRIPTION
OF A
77.56 ACRE TRACT
THOMAS CARUTHERS LEAGUE, A-9
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN THE THOMAS CARUTHERS LEAGUE, ABSTRACT NO. 9, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING THE REMAINDER OF A CALLED 271.5 ACRE TRACT CURRENTLY OWNED BY JOHN PATTON ATKINS ACCORDING TO THE BRAZOS COUNTY APPRAISAL DISTRICT, SAID 271.5 ACRE TRACT AS DESCRIBED BY A DEED TO J. M. ATKINS RECORDED IN VOLUME 43, PAGE 600 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, A PORTION OF A CALLED 26.253 ACRE TRACT AS DESCRIBED BY A DEED TO BIRD POND ROAD PROPERTY, LLC RECORDED IN VOLUME 7408, PAGE 157 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, A PORTION OF A CALLED 24.87 ACRE TRACT AS DESCRIBED BY A DEED TO CODY W. CATALENA AND LORIN V. CATALENA RECORDED IN VOLUME 7275, PAGE 88 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALLED 4.43 ACRE TRACT AS DESCRIBED BY A DEED TO BIRD POND ROAD PROPERTY, LLC RECORDED IN VOLUME 7805, PAGE 150 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, ALL OF A CALLED 6.20 ACRE TRACT AS DESCRIBED BY A DEED TO BIRD POND ROAD PROPERTY, LLC RECORDED IN VOLUME 7582, PAGE 227 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, AND ALL OF A CALLED 14.097 ACRE TRACT AS DESCRIBED BY A DEED TO BIRD POND ROAD PROPERTY, LLC RECORDED IN VOLUME 7506, PAGE 151 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF BIRD POND ROAD (VARIABLE WIDTH R.O.W.) MARKING THE WEST CORNER OF A CALLED 24.87 ACRE TRACT AS DESCRIBED BY A DEED TO CODY W. CATALENA AND LORIN V. CATALENA RECORDED IN VOLUME 7275, PAGE 88 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, AND THE NORTH CORNER OF SAID 4.43 ACRE TRACT;

THENCE: S 66° 49' 21" E ALONG THE COMMON LINE OF SAID 24.87 ACRE TRACT AND SAID 4.43 ACRE TRACT FOR A DISTANCE OF 674.23 FEET TO A 5/8 INCH IRON ROD SET ON THE COMMON LINE OF SAID 24.87 ACRE TRACT AND SAID 26.253 ACRE TRACT;

THENCE: THROUGH SAID 26.253 ACRE TRACT FOR THE FOLLOWING CALLS:

S 23° 10' 39" W FOR A DISTANCE OF 22.80 FEET TO A 5/8 INCH IRON ROD SET MARKING THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 85.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23° 08' 05" FOR AN ARC DISTANCE OF 34.32 FEET (CHORD BEARS: S 11° 36' 36" W - 34.09 FEET) TO A 5/8 INCH IRON ROD SET MARKING THE ENDING POINT OF SAID CURVE;

S 00° 02' 34" W FOR A DISTANCE OF 46.62 FEET TO A 5/8 INCH IRON ROD SET;

S 89° 57' 26" E FOR A DISTANCE OF 204.04 FEET TO A 5/8 INCH IRON ROD SET MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 235.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 41' 25" FOR AN ARC DISTANCE OF 52.05 FEET (CHORD BEARS: S 83° 36' 44" E - 51.94 FEET) TO A 5/8 INCH IRON ROD SET

MARKING THE ENDING POINT OF SAID CURVE;

THENCE: N 25° 07' 39" E CONTINUING THROUGH SAID 26.253 ACRE TRACT AND THROUGH SAID 24.87 ACRE TRACT FOR A DISTANCE OF 364.65 FEET TO A 5/8 INCH IRON ROD SET;

THENCE: S 66° 49' 21" E CONTINUING THROUGH SAID 24.87 ACRE TRACT FOR A DISTANCE OF 150.09 FEET TO A 5/8 INCH IRON ROD SET ON THE COMMON LINE OF SAID 24.87 ACRE TRACT AND SAID 26.253 ACRE TRACT;

THENCE: N 25° 07' 39" E ALONG THE COMMON LINE OF SAID 24.87 ACRE TRACT AND SAID 26.253 ACRE TRACT FOR A DISTANCE OF 529.54 FEET TO A 1/2 INCH IRON ROD FOUND ON THE SOUTHWEST LINE OF A CALLED 2.686 ACRE TRACT AS DESCRIBED BY A DEED TO RICHARD L. CARLSON AND KAREN L. CARLSON RECORDED IN VOLUME 2165, PAGE 193 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, MARKING A COMMON CORNER OF SAID 24.87 ACRE TRACT AND SAID 26.253 ACRE TRACT;

THENCE: S 39° 18' 42" E ALONG THE COMMON LINE OF SAID 26.253 ACRE TRACT AND SAID 2.686 ACRE TRACT FOR A DISTANCE OF 151.89 FEET TO A 1/2 INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF SAID 2.686 ACRE TRACT AND THE WEST CORNER OF SAID 14.097 ACRE TRACT;

THENCE: N 69° 08' 27" E ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID 2.686 ACRE TRACT FOR A DISTANCE OF 195.00 FEET TO A 1/2 INCH IRON ROD FOUND MARKING AN ANGLE POINT IN SAID LINE;

THENCE: N 35° 41' 49" E CONTINUING ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID 2.686 ACRE TRACT FOR A DISTANCE OF 69.96 FEET TO A 1/2 INCH IRON ROD FOUND MARKING THE WEST CORNER OF A CALLED 0.1897 ACRE TRACT DESCRIBED AS TRACT ONE BY A DEED TO JOHNA JOLENE GAUZE RECORDED IN VOLUME 3262, PAGE 331 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, SAID IRON ROD FOUND MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 71.65 FEET;

THENCE: ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT, SAID 0.1897 ACRE TRACT AND LOT 7, BLOCK 2, LEISURE LAKE PROPERTIES, ACCORDING TO THE PLAT RECORDED IN VOLUME 227, PAGE 405 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, SAID LOT 7, BLOCK 2, BEING DESCRIBED AS TRACT TWO BY SAID DEED TO JOHNA JOLENE GAUZE (32236/331) FOR THE FOLLOWING CALLS:

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86° 34' 39" FOR AN ARC DISTANCE OF 108.26 FEET (CHORD BEARS: S 09° 34' 51" E - 98.25 FEET) TO A 1/2 INCH IRON ROD FOUND MARKING THE ENDING POINT OF SAID CURVE;

S 54° 25' 25" E FOR A DISTANCE OF 85.00 FEET TO A 1/2 INCH IRON ROD FOUND;

N 10° 08' 09" E FOR A DISTANCE OF 159.73 FEET TO A POINT MARKING A COMMON CORNER OF SAID 0.1897 ACRE TRACT AND SAID LOT 7, BLOCK 2;

N 09° 02' 57" W FOR A DISTANCE OF 121.75 FEET TO A 1/2 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF SAID 2.686 ACRE TRACT MARKING THE NORTH CORNER OF SAID 0.1897 ACRE TRACT;

THENCE: N 35° 27' 16" E ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID 2.686 ACRE TRACT FOR A DISTANCE OF 119.90 FEET TO A POINT ON THE SOUTHWEST LINE OF THE REMAINDER OF A CALLED 50 ACRE TRACT AS DESCRIBED BY A DEED TO KATHRYNE CHENAULT RECORDED IN

VOLUME 346, PAGE 764 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 47° 09' 23" E ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID REMAINDER OF 50 ACRE TRACT FOR A DISTANCE OF 186.66 FEET TO A POINT ON THE NORTHWEST LINE OF LOT 2, BLOCK 3, LEISURE LAKE PROPERTIES (PLAT 227/405);

THENCE: ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID BLOCK 3, LEISURE LAKE PROPERTIES, FOR THE FOLLOWING CALLS:

S 54° 57' 23" W FOR A DISTANCE OF 39.05 FEET TO A ½ INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID LOT 2 AND LOT 3;

S 32° 34' 28" W FOR A DISTANCE OF 82.65 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID LOT 3 AND LOT 4;

S 19° 10' 19" W FOR A DISTANCE OF 81.78 FEET TO A ½ INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID LOT 4 AND LOT 5;

S 23° 25' 37" W FOR A DISTANCE OF 82.95 FEET TO A ½ INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID LOT 5 AND LOT 6;

S 10° 16' 04" W FOR A DISTANCE OF 85.94 FEET TO A ½ INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID LOT 6 AND LOT 7;

S 07° 24' 20" E FOR A DISTANCE OF 205.64 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF THE REMAINDER OF A CALLED 1.0 ACRE TRACT AS DESCRIBED BY A DEED TO J. M. ATKINS AND WIFE, NETTIE DEASON ATKINS, RECORDED IN VOLUME 53, PAGE 615 OF THE RELEASE RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 83° 39' 03" E ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID REMAINDER OF 1.0 ACRE TRACT FOR A DISTANCE OF 208.19 FEET TO A ½ INCH IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF SAID REMAINDER OF 1.0 ACRE TRACT;

THENCE: N 06° 30' 00" W CONTINUING ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID REMAINDER OF 1.0 ACRE TRACT FOR A DISTANCE OF 124.90 FEET TO A ½ INCH IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF A CALLED 0.20 ACRE TRACT DESCRIBED AS SECOND TRACT BY A DEED TO EDWARD M. KELLEY GRACE A. KELLEY AND WILLIAM KELLEY, JR. RECORDED IN VOLUME 281, PAGE 528 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, SAID IRON ROD FOUND BEING ON THE WESTERLY LINE OF A CALLED 1.189 ACRE TRACT AS DESCRIBED BY A DEED TO BRUCE A. JONES AND MARIA H. JONES RECORDED IN VOLUME 2253, PAGE 26 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, SAID IRON ROD FOUND MARKING THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 170.00 FEET;

THENCE: ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID 1.189 ACRE TRACT FOR THE FOLLOWING CALLS:

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 40' 42" FOR AN ARC DISTANCE OF 46.52 FEET (CHORD BEARS: S 14° 57' 09" E - 46.37 FEET) TO A ½ INCH IRON ROD FOUND MARKING THE ENDING POINT OF SAID CURVE;

S 20° 59' 53" E FOR A DISTANCE OF 128.98 FEET TO A ½ INCH IRON ROD FOUND;

S 48° 13' 13" E FOR A DISTANCE OF 96.80 FEET TO A ½ INCH IRON PIPE FOUND MARKING THE SOUTH CORNER OF SAID 1.189 ACRE TRACT;

THENCE: N 42° 10' 47" E CONTINUING ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT, SAID 1.189 ACRE TRACT AND A CALLED 1.0 ACRE TRACT DESCRIBED AS FIRST TRACT BY A DEED TO JAMES E. CHRISTIANSEN AND JEAN M. CHRISTIANSEN RECORDED IN VOLUME 1062, PAGE 380 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, FOR A DISTANCE OF 323.19 FEET TO A 1 INCH IRON PIPE FOUND ON THE SOUTHWEST LINE OF A CALLED 58.969 ACRE TRACT AS DESCRIBED BY A DEED TO WILLIAME. GRANT AND WIFE, LINDA GRANT, RECORDED IN VOLUME 357, PAGE 128 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, MARKING THE EAST CORNER OF SAID 1.0 ACRE TRACT;

THENCE: S 48° 00' 28" E ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID 58.969 ACRE TRACT FOR A DISTANCE OF 537.43 FEET TO A CONCRETE MONUMENT FOUND ON THE NORTHWEST LINE OF THE REMAINDER OF A CALLED 78.78 ACRE TRACT AS DESCRIBED BY A DEED TO CARTER LAKE HOME OWNERS CORPORATION RECORDED IN VOLUME 2414, PAGE 20 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, MARKING THE EAST CORNER OF SAID 14.097 ACRE TRACT AND THE SOUTH CORNER OF SAID 58.969 ACRE TRACT;

THENCE: S 41° 39' 44" W ALONG THE COMMON LINE OF SAID 14.097 ACRE TRACT AND SAID REMAINDER OF 78.78 ACRE TRACT FOR A DISTANCE OF 807.36 FEET TO A 6 INCH FENCE POST FOUND MARKNG AN ANGLE POINT IN THE COMMON LINE OF SAID 26.253 ACRE TRACT AND SAID REMAINDER OF 78.78 ACRE TRACT;

THENCE: S 22° 06' 53" W ALONG THE COMMON LINE OF SAID 25.253 ACRE TRACT AND SAID REMAINDER OF 78.78 ACRE TRACT FOR A DISTANCE OF 23.21 FEET TO A 3/8 INCH IRON ROD FOUND MARKING THE NORTHWEST CORNER OF A CALLED 1.91 ACRE TRACT AS DESCRIBED BY A DEED TO CARTER LAKE DEVELOPMENT CORP. RECORDED IN VOLUME 1638, PAGE 229 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 20° 49' 13" W ALONG THE COMMON LINE OF SAID 26.253 ACRE TRACT AND SAID 1.91 ACRE TRACT FOR A DISTANCE OF 559.21 FEET TO A 5/8 INCH IRON ROD FOUND ON THE NORTHWEST LINE OF A CALLED 6.33 ACRE TRACT AS DESCRIBED BY A DEED TO B. D. CATES RECORDED IN VOLUME 267, PAGE 153 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, SAID IRON ROD FOUND MARKING THE SOUTHEAST CORNER OF SAID 6.20 ACRE TRACT AND THE NORTHEAST CORNER OF THE REMAINDER OF A CALLED 26.25 ACRE TRACT AS DESCRIBED BY A DEED TO JACK P. FRIEDMAN RECORDED IN VOLUME 1102, PAGE 592 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 77° 18' 07" W ALONG THE COMMON LINE OF SAID 6.20 ACRE TRACT AND SAID REMAINDER OF 26.25 ACRE TRACT FOR A DISTANCE OF 701.50 FEET TO A 5/8 INCH IRON ROD FOUND ON THE EAST LINE OF SAID REMAINDER OF 271.5 ACRE TRACT MARKING THE SOUTHWEST CORNER OF SAID 6.20 ACRE TRACT;

THENCE: S 20° 16' 54" W ALONG THE COMMON LINE OF SAID REMAINDER OF 271.5 ACRE TRACT AND SAID REMAINDER OF 26.25 ACRE TRACT FOR A DISTANCE OF 21.46 FEET TO A ½ INCH IRON ROD FOUND MARKING THE NORTHWEST CORNER OF A CALLED 26.245 ACRE TRACT AS DESCRIBED BY A DEED TO FLYING ACE RANCH, LTD. RECORDED IN VOLUME 3767, PAGE 237 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 85° 53' 57" W ALONG THE COMMON LINE OF SAID REMAINDER OF 271.5 ACRE TRACT AND SAID 26.245 ACRE TRACT FOR A DISTANCE OF 1835.12 FEET TO A 3/8 INCH IRON ROD FOUND ON THE EASTERLY LINE OF BIRD POND ROAD MARKING THE SOUTHWEST CORNER OF SAID REMAINDER OF 271.5 ACRE TRACT AND THE NORTHWEST CORNER OF A CALLED 26.25 ACRE TRACT AS DESCRIBED BY

A DEED TO DALE W. AND REBA CONRAD RECORDED IN VOLUME 573, PAGE 198 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE SOUTHEAST LINE OF BIRD POND ROAD FOR THE FOLLOWING CALLS:

N 14° 08' 29" E FOR A DISTANCE OF 201.16 FEET TO A 1/2 INCH IRON ROD FOUND MARKING AN ANGLE POINT IN SAID LINE;

N 17° 05' 14" E FOR A DISTANCE OF 464.44 FEET TO A 60D NAIL FOUND IN A FENCE POST MARKING THE NORTHWEST CORNER OF SAID REMAINDER OF 271.5 ACRE TRACT AND THE SOUTHWEST CORNER OF SAID 4.43 ACRE TRACT;

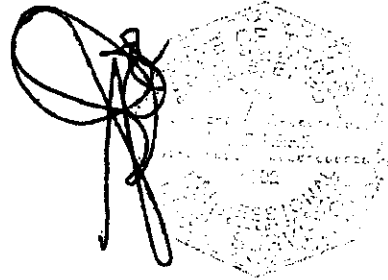
N 19° 35' 33" E FOR A DISTANCE OF 90.96 FEET TO A POINT;

N 29° 33' 26" E FOR A DISTANCE OF 329.18 FEET TO A POINT;

N 32° 37' 28" E FOR A DISTANCE OF 140.98 FEET TO THE POINT OF BEGINNING CONTAINING 77.56 ACRES OF LAND, MORE OF LESS, AS SURVEYED ON THE GROUND AUGUST, 2007. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/07-981C.MAB



Filed for Record in:
BRAZOS COUNTY

On: Dec 26, 2007 at 02:18P

As a
NO LABEL RECORDING

Document Number: 00984910

Amount 143.00

Receipt Number - 331766

By:
Seth Gallion

STATE OF TEXAS COUNTY OF BRAZOS
I hereby certify that this instrument was
filed on the date and time stamped hereon by me
and was duly recorded in the volume and page
of the Official Public records of:

BRAZOS COUNTY

as stamped hereon by me.

Dec 26, 2007

HONORABLE KAREN MCQUEEN, COUNTY CLERK
BRAZOS COUNTY