

THIS DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS OF DUCK HAVEN ESTATES IS BEING REFILED IN ORDER TO ATTACH THE SIGNATURE AND CONSENT AND SUBORDINATION BY LIENHOLDER OMITTED FROM THE DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS RECORDED IN VOLUME 5639, PAGE 153 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
OF
DUCK HAVEN ESTATES

Filed for Record in:
BRAZOS COUNTY

On: Feb 24, 2004 at 02:30P

As a
Recording

Document Number: **00846415**

Amount **85.00**

Receipt Number - 236856

By,
Sylvia Polansky

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 named records of:
BRAZOS COUNTY
as stamped hereon by me.

Feb 24, 2004

HONORABLE KAREN MCQUEEN, COUNTY CLERK
BRAZOS COUNTY

DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
OF
DUCK HAVEN ESTATES

TABLE OF CONTENTS

ARTICLE 1

DEFINITIONS Page 1

1.01 "ACC" Page 1

1.02 "Access Road" Page 1

1.03 "Architectural Guidelines" Page 1

1.04 "Assessment" Page 2

1.05 "Association" Page 2

1.06 "Board" Page 2

1.07 "Common Areas" Page 2

1.08 "Conservation Areas and/or Easements, Corridors & Parks" Page 2

1.09 "Culvert Design Guidelines" Page 2

1.10 "Declaration" Page 2

1.11 "Development Period" Page 3

1.12 "DH" Page 3

1.13 "Dwelling Unit" Page 3

1.14 "Easements" Page 3

1.15 "Fencing Guidelines" Page 3

1.16 "Fiscal Year" Page 3

1.17 "Improvement" Page 3

1.18 "Lake" Page 3

1.19 "Lake Lot" Page 3

1.20 "Lot" Page 3

1.21 "Member" Page 3

1.22 "Owner" Page 4

1.23 "Plat" Page 4

1.24 "Property" Page 4

1.25 "Special Assessment" Page 4

1.26 "Stream Map and Identification Table" Page 4

1.27 "Structure" Page 4

1.28 "Subdivision" Page 4

1.29 "Supplemental Declaration" Page 4

1.30 "Telecommunication Guidelines" Page 4

1.31 "Trails" Page 5

1.32 "Waterway" Page 5

1.33 "Wiring Guidelines" Page 5

ARTICLE 2

ARCHITECTURAL CONTROL COMMITTEE Page 5

2.01 Membership of Architectural Control Committee Page 5

2.02 Action of Architectural Control Committee Page 5

2.03 Advisory Members Page 5

Declaration of Covenants, Conditions,
Reservations and Restrictions
of Duck Haven Estates

		Doc	Bk	Vol	Page 5	Pg
2.04	<u>Term</u>	00846415	OR	5883	Page 5	226
2.05	<u>DH's Rights of Appointment</u>				Page 5	
2.06	<u>ACC Jurisdiction</u>				Page 5	
2.07	<u>Adoption of Architectural Guidelines and Rules by the ACC</u>				Page 6	
2.08	<u>Review of Proposed Construction</u>				Page 7	
2.09	<u>Preliminary and Final Plan Submission and Approval Process</u>				Page 8	
2.10	<u>Actions of the ACC</u>				Page 9	
2.11	<u>No Waiver of Future Approvals</u>				Page 10	
2.12	<u>Work in Progress</u>				Page 10	
2.13	<u>Nonliability of ACC Members</u>				Page 10	
2.14	<u>Certificate of Compliance</u>				Page 10	
2.15	<u>Variances</u>				Page 10	
2.16	<u>Governmental Agency Approval</u>				Page 10	
2.17	<u>Relationship with Association</u>				Page 10	
2.18	<u>Violation of Article 2</u>				Page 11	
2.19	<u>Remedy</u>				Page 11	

ARTICLE 3

DUCK HAVEN HOMEOWNERS ASSOCIATION(S)		Page 11
3.01	<u>Organization</u>	Page 11
3.02	<u>Membership</u>	Page 11
3.03	<u>Voting Rights</u>	Page 12
3.04	<u>Powers and Authority of the Association</u>	Page 12
3.05	<u>Board of Directors</u>	Page 13
3.06	<u>Maintenance</u>	Page 14
3.07	<u>Common Areas</u>	Page 14
3.08	<u>Association Powers</u>	Page 14
3.09	<u>Agreements with Governmental Entities</u>	Page 15
3.10	<u>Telecommunication Services</u>	Page 15
3.11	<u>Indemnification</u>	Page 16

ARTICLE 4

RESTRICTIONS		Page 16
4.01	<u>Building, Construction, and Use Restrictions</u>	Page 16
4.02	<u>General Restrictions</u>	Page 19
4.03	<u>Restrictions for Waterways and Lakes</u>	Page 21
4.04	<u>Restrictions Relating to Conservation Development</u>	Page 22

ARTICLE 5

WATER SERVICE; NO PRIVATE WELLS		Page 23
--	--	---------

ARTICLE 6

RIGHTS OF ENJOYMENT IN THE COMMON AREAS		Page 24
6.01	<u>Easement</u>	Page 24
6.02	<u>Extent of Members' Easements</u>	Page 24
6.03	<u>Restricted Actions by Members</u>	Page 24
6.04	<u>Delegation of Use; Damage to the Common Areas</u>	Page 25
6.05	<u>Rules of the Board</u>	Page 25
6.06	<u>Use of Common Areas</u>	Page 25
6.07	<u>User Fees and Charges</u>	Page 25
6.08	<u>Encroachments</u>	Page 25

*Declaration of Covenants, Conditions,
Reservations and Restrictions
of Duck Haven Estates*

ARTICLE 7

FUNDS AND ASSESSMENTS Page 26
7.01 Assessments Page 26
7.02 Maintenance Fund Page 26
7.03 Regular Annual Assessments Page 26
7.04 Special Assessments Page 26
7.05 Owner's Personal Obligation for Payment of Assessments; Late Fees Page 26
7.06 Assessment Lien and Foreclosure Page 27

ARTICLE 8

EASEMENTS Page 27
8.01 Reserved Easements Page 27
8.02 Installation and Maintenance Page 28
8.03 Surface Areas Page 28
8.04 Drainage Easements Page 28
8.05 Blanket Easement Page 28
8.06 Riparian Management Easement Page 28

ARTICLE 9

MISCELLANEOUS PROVISIONS Page 28
9.01 Applicability Page 28
9.02 Term Page 29
9.03 Mortgagee Page 29
9.04 Assignment of DH Rights and Duties Page 29
9.05 Run With Land Page 29
9.06 Deviations Page 29
9.07 Severability Page 29
9.08 Enlargement or Reduction of the Property Page 29
9.09 Amendment Page 30
9.10 Failure to Enforce Covenants Page 30
9.11 Covenants Do Not Create Reversion Page 30
9.12 Relief for Violation or Breach Page 30
9.13 Enforcement of Covenants Page 31
9.14 Alteration of this Declaration Page 31
9.15 Assignment by the Association Page 31
9.16 Definition of "Titles" Page 31
9.17 Notices Page 31
9.18 Mutuality, Reciprocity, Runs with Land Page 32
9.19 No Warranty of Enforceability Page 32
9.20 Time is of the Essence Page 32
9.21 Maximum Interest Payable Page 32
9.22 Replatting Page 32
9.23 Conflict Page 32

DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
OF
DUCK HAVEN ESTATES

STATE OF TEXAS §

COUNTY OF BRAZOS §

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of the Duck Haven Estates, is made effective as of the 30th day of September, 2003, by Duck Haven, Ltd, a Texas limited partnership (hereinafter sometimes referred to as "DH"):

WHEREAS, DH is the owner of all that certain tract of land in Brazos County, Texas, which tract is described on Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, DH 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, to protect and conserve the native beauty and natural plant and wildlife habitats of the Property (as defined below) 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;

NOW THEREFORE, the following restrictions, including without limitation restrictions, covenants, declaration, easements, limitations, charges, agreements, and conditions (hereafter collectively called the "Restrictions"), are hereby established and adopted to apply uniformly to use, occupancy and conveyance of all the Lots in the Subdivision. Every contract, deed or conveyance which may be hereafter executed with regard to any of the Property shall be conclusively deemed to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions, even if the covenants, conditions and restrictions are not set out in full and are not incorporated by reference in such contract of sale, deed, lease or other transfer of and interest in such parcel.

**ARTICLE 1
DEFINITIONS**

The following words when used in this instrument shall have the following meanings:

1.01 "ACC" shall mean the Architectural Control Committee, established under Article 2 of this Declaration, and its successors and assigns.

1.02 "Access Road" shall mean any road depicted on the Plat or other publicly dedicated street, drive, boulevard, road, alley, lane, avenue or thoroughfare.

1.03 "Architectural Guidelines" shall mean those particular standards, restrictions, guidelines, recommendations and specifications promulgated by the ACC applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Property, and all amendments, bulletins, modifications, supplements and interpretations thereof, and including, without limitation, Fencing Guidelines and Wiring Guidelines.

1.04 "Assessment" shall mean and refer to the assessments levied by the Board pursuant to Article 7.

1.05 "Association" shall mean the non-profit association formed by DH pursuant to Article 3 of this Declaration which has the power, duty and responsibility of maintaining and administering certain portions of the Property and all of the Common Areas, administering and enforcing this Declaration and otherwise maintaining and enhancing the quality of life and conserving the native beauty and plant and wildlife habitats within the Subdivision.

1.06 "Board" shall mean and refer to the Board of Directors of the Association.

1.07 "Common Areas" shall mean any and all areas of land within the Property which are known, described or designated as common areas, parks, conservation areas, recreational easements, flood way easement areas, lakes, ponds, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easement, green belts, open spaces, paths and trails, and the like including without limitation those shown on any recorded subdivision plat of portions of the Property as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The concept of Common Areas will also include:

- (a) any and all public right-of-way lands within the Property for which Brazos County has required that DH and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, street scape, trails, park areas and quasi-governmental service facilities; and
- (b) any and all facilities provided by DH and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated.

DH may convey record title or easements to some or all of the Common Areas to the Association if, as and when deemed appropriate by DH or as may be required by governmental officials, and DH shall at all times have and retain the right to effect minor redesigns or minor reconfiguration of the Common Areas (particularly along the edges) and to execute any open space declarations applicable to the Common Areas which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

1.08 "Conservation Areas and/or Easements, Corridors & Parks" hereinafter "CAC&P" shall mean and refer to those portions of the Common Areas, which by plat or other recorded instrument are restricted for use solely for conservation and passive recreation purposes. DH or the Association (after the Development Period) reserves the sole and exclusive right to amend existing CAC&P's, add new CAC&P's and amend any permissible activities within or rights to access the CAC&P's. DH and the Association make no guarantees or warranties of any nature for the longevity and mortality of habitats of any species on the Property.

1.09 "Culvert Design Guidelines" shall mean those guidelines referred to in Section 4.01.03 of this Declaration.

1.10 "Declaration" shall mean this "Declaration of Covenants, Conditions and Restrictions", together with any and all amendments or supplements hereto recorded in the Official Records of Brazos County, Texas.

1.11 "Development Period" shall mean a period commencing on the date of the recording of this Declaration in the Official Records of Brazos County, Texas and continuing thereafter until and ending on the earlier to occur of:

- (a) substantial completion of all development (including without limitation the completion and sale of all Lots to third parties) within the Property;
- (b) the twentieth-fifth (25th) anniversary of the date of recordation of this Declaration in the Official Records of Brazos County, Texas; or
- (c) the date determined by DH to be the end of the Development Period.

1.12 "DH" shall mean and refer to Duck Haven, Ltd. and any successor(s) and assign(s) of Duck Haven, Ltd., with respect to the voluntary disposition of all (or substantially all) of the assets and/or ownership interests of Duck Haven, Ltd., and/or the voluntary disposition of all (or substantially all) of the right, title and interest of Duck Haven, Ltd. in and to the Property. However, no person or entity merely purchasing one or more Lots from Duck Haven, Ltd. in the ordinary course of business shall be considered a successor or assign of DH for purposes of this Declaration.

1.13 "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.

1.14 "Easements" shall mean those easements more particularly described in Article 8 of this Declaration.

1.15 "Fencing Guidelines" shall mean those fencing guidelines described in Section 4.01.17 of this Declaration.

1.16 "Fiscal Year" shall mean the fiscal year adopted by the Association, which will initially be January 1st through December 31st until changed by the Board.

1.17 "Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

1.18 "Lake" shall mean any lake(s) and pond(s) existing or established on the Property by DH.

1.19 "Lake Lot" shall mean any Lot having at least one property line that abuts a Lake.

1.20 "Lot" shall mean those Lots shown on a plat filed of record with the Clerk of Brazos County, Texas of all or a portion of the Property or covering property made subject to this Declaration after the date hereof in accordance with Section 9.08. The term "Lot" does not include the Common Areas or any portion thereof. In the case of a parcel of land within the Property, which has not been platted into Lots, the parcel shall be deemed to contain the number of Lots designated by DH on the then current development plan for such parcel of land unless or until a different number of Lots is platted.

1.21 "Member" shall mean each Owner who is in good standing with the Association.

1.22 "Owner" shall mean the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, or any part or interest therein, but shall not mean or refer to any mortgagee, under any applicable theory of mortgage, unless and until such mortgagee has acquired legal title pursuant to foreclosure or any proceeding in lieu of foreclosure. The term "Owner" shall further include any person or entity claiming title to any Lot or portion thereof by adverse possession, and any person or entity claiming interest in a Lot or part thereof under a contract of sale.

1.23 "Plat" shall mean a plat of the Property or portion thereof, recorded or to be recorded in the Official Records Brazos County, Texas, or any other plat recorded in the Official Records of Brazos County, Texas of all or any portion of the Property.

1.24 "Property" shall mean the real property described on Exhibit "A" and any other real property made subject to this Declaration after the date hereof in accordance with Section 9.08.

1.25 "Special Assessment" shall mean and refer to any assessment levied by the Board pursuant to Section 7.04.

1.26 "Stream Map and Identification Table" shall mean and refer to the Stream Map and Identification Table, if any, described in Section 4.04.05 that may be promulgated and modified by the ACC from time to time to identify the Waterways existing on the Property.

1.27 "Structure" shall mean and refer to:

- (a) any thing or device, other than trees, shrubbery and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, outbuilding, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot;
- (b) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any Waterway, wash or drainage channel from, upon or across any Lot;
- (c) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and
- (d) any change in the grade of any Lot of more than six (6) inches from that existing at the time of initial construction approval by the ACC.

1.28 "Subdivision" shall mean the Duck Haven Subdivision (sometimes also referred to the "Duck Haven Estates"), to be developed on the Property pursuant to the plat(s) recorded or to be 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 9.08, as well as any and all revisions, modifications, corrections or clarifications thereto.

1.29 "Supplemental Declaration" shall mean a separate declaration of covenants, conditions and restrictions which is imposed on a portion of the property within the jurisdiction of the Association and which is administered by and may be enforced by the Association.

1.30 "Telecommunication Guidelines" shall mean those telecommunication guidelines described in Section 3.10 of this Declaration.

1.31 "Trails" shall mean and refer to the trails on the Property maintained by the Association and more particularly described in Section 4.04.03.

1.32 "Waterway" shall mean refer to any lake, river, stream, canal or other body of water, including, without limitation, water channels of any classification whether perennial, intermittent, ephemeral or man made and water shed/drainage courses within or adjacent to the Property, whether or not such body of water continuously contains water, and all Waterways designated on the Stream Map and Identification Table, if any. The ACC shall, in its sole and absolute discretion, make all determinations as to whether a body of water or water course constitutes a Waterway.

1.33 "Wiring Guidelines" shall mean those wiring guidelines described in Section 4.01.15 of this Declaration.

**ARTICLE 2
ARCHITECTURAL CONTROL COMMITTEE**

2.01 Membership of Architectural Control Committee. The Architectural Control Committee shall consist of at least one (1) and not more than four (4) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated as the initial Voting Members of the ACC: Paul J. Clarke, Pamela Johnson and Cindy Miller. The ACC shall maintain records of the member appointments and its actions as a committee. In the event a member resigns or no longer serves for any reason, the remaining Voting Members shall select a replacement.

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

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

2.04 Term. Each Voting Member of the ACC 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.

2.05 DH's Rights of Appointment. During the Development Period, DH shall have the right to appoint and/or remove all Voting Members of the ACC, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, DH may delegate its right of appointment, or any portion thereof, to the Board of Directors of the Association (the "Board") by written instrument before such date. After the Development Period, 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 ACC, 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 reasonably possible, be drawn from Members of the Association.

2.06 ACC Jurisdiction. No Structure, fence or Improvement of any kind or nature shall be erected, placed or altered on any Lot and no damming of Waterways or construction within seventy-five feet (75') (or such greater distance as determined by the ACC from time to time for particular Waterways) of a stream, channel or Waterway shall occur until all plans and specifications for such construction have been submitted to and approved in writing by the ACC pursuant to Section 2.09 by a majority of its Voting Members, as to:

2.06.01 quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design and proper facing of main elevation with respect to nearby streets in accordance with this Declaration and/or bulletins;

2.06.02 minimum finished floor elevation and proposed footprint of the Structure, if applicable;

2.06.03 conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping, if applicable;

2.06.04 drainage impacts and solutions;

2.06.05 the observance of and compliance with applicable setback lines and Easements and the enhancement of aesthetic views and visual corridors to and from the Common Areas and Trails; and

2.06.06 the other standards set forth within this Declaration (and any amendments hereto), guidelines and bulletins issued by the ACC, or matters in which the ACC has been vested with the authority to render a final interpretation and decision.

The ACC is authorized and empowered to consider and review any and all aspects of construction, location, habitat and ground clearing and landscaping, which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Property. The ACC may consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials that may or may not be permitted, in accordance with sole discretion of the ACC.

The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (a) Submit preliminary construction and ground clearing plans and specifications to the ACC in accordance with Section 2.09.01;
- (b) Submit final plans and specifications to the ACC in accordance with Section 2.09.02; and
- (c) Submit copy of building permit to the ACC.

The ACC may require as a condition precedent to any approval of the final plans and specifications, that the applicant obtain and produce an appropriate building permit from the City of College Station or Brazos County, Texas, as applicable, and any other permits required by a governmental unit having jurisdiction over the proposed project. The ACC is also authorized to coordinate with the City of College Station or Brazos County, as applicable, in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration. However, the mere fact that the City of College Station or Brazos County issues a building permit with respect to a proposed structure does not automatically mean that the ACC is obliged to unconditionally approve the plans and specifications. Similarly, the ACC's approval of any plans and specifications does not mean that all applicable building requirements of the City of College Station or Brazos County have been satisfied.

Each and every Owner and applicant shall use their respective best efforts to commence construction of all improvements approved by the ACC and the City of College Station or Brazos County, Texas (and any and all other applicable governmental agencies) within sixty (60) days after obtaining all necessary governmental approvals therefor and thereafter diligently pursue the project through to completion. The ACC is not responsible for informing applicant of the need to acquire any approval, certificate and/or permit as required by law or ordinance and applicant is solely responsible for investigating and receiving such approvals, certificates and/or permits.

2.07 Adoption of Architectural Guidelines and Rules by the ACC.

2.07.01 The ACC may from time to time publish and promulgate architectural standards bulletins or guidelines and/or lot information sheets that shall carry forward the spirit and intention of this

Declaration. Such bulletins and lot information sheets shall supplement this Declaration and are incorporated herein by reference. EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS BULLETINS OR GUIDELINES AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT WITHIN THE SUBDIVISION. The ACC shall have the right, power and authority to establish and prescribe architectural standards bulletins and guidelines pertaining to such items and topics as (but not necessarily limited to):

- (a) A site plan showing the "footprint" of the Structures and Improvements, location of all existing trees and proposed improvements, including but not limited to, Structures, patios, driveways, parking areas, outbuildings, fences and walls.
- (b) Exterior elevations of all proposed Structures and Improvements.
- (c) A description and samples of exterior materials, colors, textures and shapes of all Structures and Improvements.
- (d) Site clearing of natural habitat and landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover, and the protection and preservation of trees and other existing and introduced vegetation.
- (e) Utility connections, including routing of electrical, gas, water, sanitary sewer, telephone and cables.
- (f) Exterior illumination and location.
- (g) Dimensional floor plan of all enclosed spaces and any garages or parking facilities.
- (h) Mailbox location and design.
- (i) Drainage impacts and solutions.
- (j) Such other matters as may be required by the then applicable zoning and building codes of the City of College Station and/or Brazos County, Texas, as applicable.
- (k) The items described in Section 2.06 above and any other data or information requested or deemed reasonably necessary by the ACC.

****PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY ENCOURAGED TO CONTACT DH, THE ASSOCIATION OR THE ACC TO OBTAIN AND REVIEW THE MOST RECENT ARCHITECTURAL GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.****

2.07.02 The ACC 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 rules governing the submission and approval process for the construction of Structures and Improvements on a Lot, building codes, fire codes, housing codes, and other similar codes.

2.08 Review of Proposed Construction. Whenever in this Declaration the approval of the ACC is required, the ACC shall have the right to consider all of the construction plans and specifications, renderings,

elevation sketches, surveys and any other information requested by or supplied to the ACC for the Structure, Improvement or proposal in question (collectively "Plans and Specifications") and all other facts that, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of construction of any Structure or Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the ACC in accordance with Section 2.09 and any rules adopted by the ACC. Construction may not commence unless and until the ACC has approved in writing such Plans and Specifications in accordance with Section 2.09. The ACC 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 ACC may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Structure or Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The ACC may, but shall not be required to, disapprove any Structure or Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Structure or Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. The ACC shall have the authority to disapprove any proposed Structure or Improvement based upon the restrictions set forth in the preceding sentence. The ACC shall not be responsible for reviewing any proposed Structure or 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.

2.09 Preliminary and Final Plan Submission and Approval Process. All submissions of Plans and Specifications to the ACC should meet the requirements of this Section 2.09 and be made in accordance with the rules promulgated by the ACC for the submission and approval process. All submissions shall boldly state by cover letter and on the plans whether they are a submission of preliminary or final plans. A Lot Owner is not required to make a preliminary plan submission, but is encouraged to do so to avoid increased architectural and engineering fees. All submissions must be delivered to the ACC by certified mail, return receipt requested, hand delivery or such other manner authorized by rule of the ACC.

2.09.01 Preliminary Plan Submission and Approval. The ACC is authorized to consider and comment on preliminary plans on an informal basis to assist Owners, developers, homebuilders and prospective purchasers of the Lots in complying with this Declaration and any Architectural Guidelines and to assist in the completion of any feasibility studies undertaken by such persons or entities. The ACC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis. The ACC may require an Owner to attend a regularly scheduled or special meeting of the ACC to review and discuss the preliminary plan submission.

- (a) Preliminary plans shall consist of the following and any other information required by the ACC from time to time, which may be submitted separately or simultaneously:
 - (i) Plan/sketch/rendering of proposed development, including without limitation, the approximate location of all Dwellings, Fences, antennas, satellite dishes and other telecommunication structures and other Structures, which depicts the number of linear feet between such items from the boundary lines of the Lot; and
 - (ii) Elevation sketch of all Dwellings and other Structures and all lake front elevations, if applicable. The sketch should include specific information regarding the constructions materials to be used on the exterior of the Structures.

- (b) The ACC will review the preliminary plan submission(s) and provide a written notice to the Owner to proceed with the final plan approval process or a written notice of the ACC recommendations that must be met before preliminary plan approval will be granted.
- (c) If the ACC fails to approve or disapprove a preliminary plan submission within fourteen (14) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed. Review of the preliminary plans is provided as a courtesy to the Owners and is not binding on the ACC or the Owner.

2.09.02 Final Plan Submission and Approval.

- (a) Final detailed construction plans and specifications, elevations, a survey and any other information required by the ACC from time to time ("Final Plan Submission") shall be submitted in duplicate to the ACC for approval or disapproval. The ACC may request the submission of samples of proposed construction materials and other information necessary to evaluate the Final Plan Submission. The ACC may require an Owner to attend a regularly scheduled or special meeting of the ACC to review and discuss the Final Plan Submission. The ACC may charge the Owner a fee, as set from time to time by the Association, for the review of the Final Plan Submission, and such fee shall be paid at the time the Final Plan Submission is submitted to the ACC.
- (b) At such time as the Final Plan Submission meets the approval of the ACC, one complete set of the Final Plan Submission will be retained by the ACC and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative. Any modification or change to any part of the approved Final Plan Submission must again be submitted to the ACC for its inspection and approval.
- (c) If found not to be in compliance with this Declaration, one set of the Final Plan Submission shall be returned marked "Disapproved," accompanied by a reasonable statement and explanation of items found not to comply with this Declaration.
- (d) If the ACC fails to approve or disapprove the Final Plan Submission within thirty (30) days after the actual date on which the complete submission and all information requested by the ACC is received, then the ACC approval shall be presumed.
- (e) The decision of the ACC shall be final and binding so long as it is made in good faith. A Lot Owner may request the ACC to reconsider a decision; however, a Lot Owner may only request reconsideration of ACC decisions more than two (2) times in any twelve (12) month period.

2.09.03 Delivery Address. Submissions to the ACC shall be made in care of TXCAMCO, 3608 E. 29th Street, Suite 100A, Bryan, Texas 77802, or in care of such other person at such other address as may be designated by the ACC from time to time.

2.10 Actions of the ACC. The ACC may, by resolution unanimously adopted in writing, designate one or two of its Voting Members or an agent acting on its behalf to take any action or perform any duties for

and on behalf of the ACC. In the absence of such designation, the vote of a majority of all of the Voting Members of the ACC taken without a meeting, shall constitute an act of the ACC.

2.11 No Waiver of Future Approvals. The approval or consent of the ACC 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 ACC, 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.

2.12 Work in Progress. The ACC may, at its option, inspect all work in progress to insure compliance with approved Plans and Specifications.

2.13 Nonliability of ACC Members. Neither the ACC 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 ACC's duties under this Declaration unless due to the willful misconduct or bad faith of the ACC or its members, as the case may be. Neither the ACC nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of an obstruction of the view from such Owner's Lot or Lots.

2.14 Certificate of Compliance. Upon completion of any Improvement approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot, the Plans and Specifications pursuant to which the improvements were made, the use or uses to be conducted with respect to the improvements, and shall further specify that the improvements comply with the approved Plans and Specifications and that said Plans and Specifications are on file with the ACC. The certificate shall not be construed to certify the acceptability or sufficiency of, or endorsement by, the ACC of the actual construction of the improvements or of the structural integrity, workmanship or materials thereof. The Owner is hereby notified that the certificate in no way warrants, except as set forth above, the sufficiency or acceptability of or endorsement by, the ACC of the construction, structural integrity, workmanship or materials of the improvements. Preparation and recordation of such a certificate shall be at the expense of the Owner of the improved Lot.

2.15 Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the ACC, so long as all other elements, materials and locations of the proposed improvements are otherwise in compliance with the terms of this Declaration and Architectural Guidelines promulgated by the ACC.

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

2.17 Relationship with Association. The ACC has been created pursuant to this Declaration to perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The ACC does not exercise the authority of the Board, and shall not do so unless and until:

- (a) the Board shall have duly appointed a majority of Board members to the ACC, and
- (b) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the ACC a committee of the Board in accordance with the Texas Non-Profit Corporation Act.

2.18 Violation of Article 2. If any Structure or Improvement shall be erected, placed or maintained on any Lot other than in accordance with Plans and Specifications approved by the ACC pursuant to Section 2.09, such Improvement shall constitute a violation of this Declaration. Upon written notice (the "Notice") from the ACC or its designee, any such Improvement shall promptly be removed or corrected so as to extinguish the violation. The ACC may approve a violation existing under the provisions of this Article 2 by issuing a written approval of the Improvement in question.

2.19 Remedy. If an Owner of a Lot upon which a violation exists does not:

- (a) commence such curative action within fifteen (15) days from the date of the Notice to the applicable Owner and thereafter continue to diligently pursue such curative action until completed; and
- (b) notify the ACC of the commencement of the curative action being taken within fifteen (15) days of such Notice to the Owner specifying the violation of this Declaration; then
 - (i) the Association or the ACC may enter upon such Lot and take such steps as were specified in the Notice to extinguish the violation of this Declaration, or
 - (ii) the Association, the ACC or any other Owner may pursue any remedies available hereunder or at law or in equity.
- (c) The cost of any curative action taken by the Association or the ACC shall be:
 - (i) a binding, personal obligation of the Owner of the Lot upon which the violation exists;
 - (ii) payable on demand; and
 - (iii) secured by the lien granted in Article 7 below, on the terms and conditions set forth therein.

The generality of this Article 2 shall not be in any manner altered, affected or diminished by the specific restrictions as to the type and location of certain Improvements, otherwise herein provided for.

**ARTICLE 3
DUCK HAVEN HOMEOWNERS ASSOCIATION(S)**

3.01 Organization. DH has caused or will cause the formation and incorporation of one or more Associations, each 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 and in this 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. It is contemplated that there will be one or more additional phases to the Subdivision. When that occurs, DH may adopt this Declaration of Covenants, Conditions, Reservations and Restrictions by reference but may make modifications or additions to it. In such event, the lot owners in said new phase may be made members of the same Association created for the Subdivision and therefore subject to all provisions and benefits set forth herein; provided, however, any modifications or additions by the new phase will take precedence as to that phase.

3.02 Membership. Each and every Owner of each and every Lot which is subjected to this Declaration shall automatically be, and must at all times remain, a Member of the Association in good standing. During the Development Period, the Association shall have two (2) classes of Members: Class A

and Class B. The Class A Members shall be all Owners (other than DH during the Development Period). The Class B Member shall be DH. Any Owner or Member shall not be in "good standing" if such person or entity is:

- (a) in violation of any portion of this Declaration, or any rule or regulation promulgated by the Board;
- (b) delinquent in the full, complete and timely payment of any annual assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of this Declaration, the Bylaws of the Association or any rule or regulation promulgated by the Board.

If DH develops further acreage under a common scheme or plan of development with the Subdivision, DH may require such property owners to be Members of the Association and they shall have equal voting rights therein on the same basis as owners of a Lot within the Property.

3.03 Voting Rights.

3.03.01 During the Development Period, the two (2) classes of Members will have the following voting rights:

Class A: The Owner (s) of each Lot (other than DH) shall be entitled to no votes.

Class B: The Class B Member shall have one (1) vote for each Lot it owns and one (1) vote per acre of unplatted land subject to this Declaration.

3.03.02 After the Development Period, there shall be one class of voting Members as follows: The Owner of each Lot shall be entitled to one (1) vote per Lot. In the event DH owns unplatted land subject to this Declaration, DH shall have one (1) vote per acre of unplatted land subject to this Declaration. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owner (s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

3.03.03 A majority of the Members entitled to vote, represented in person or by proxy, shall constitute a quorum at all meetings of the Members for the transaction of business. When a quorum is present at a meeting, the vote of the holders of a majority of votes present or present by proxy at such meeting and entitled to vote shall be the act of the Members, unless the vote of a different number is required by the Articles of Incorporation or Bylaws of the Association or this Declaration.

3.03.04 The Association may suspend the voting rights of any Member for any period during which an assessment or installment of an assessment remains delinquent as provided in Article 7.03 hereof or if a Member is in violation of any provision of this Declaration.

3.04 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 of Directors acting on behalf of the Association, shall have the following powers and authority at all times:

3.04.01 Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend

or repeal and re-enact, such Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.

3.04.02 Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.

3.04.03 Records. To keep books and records of the Association's affairs.

3.04.04 Assessments. To levy Assessments as provided herein.

3.04.05 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 this Declaration or Easements or for the purpose of erecting, maintaining or repairing any improvement to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and improvements thereon, and shall be enforced in the same manner and to the same extent as provided herein 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 and on behalf of any 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 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 Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against DH, its successors or assigns.

3.04.06 Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the operation of the Association.

3.04.07 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.

3.04.08 Employees. To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

3.04.09 Conservation Management. To engage a company to assist in the conservation management of the Property. The HOA shall be initially managed by an entity specializing in residential conservation community association management. The initial entity to be retained to perform this task is Texas Conservation Community Association Management Company hereinafter "TXCAMCO".

3.05 Board of Directors. During the Development Period, the affairs of the Association shall be managed by a board of three (3) individuals elected or replaced by the Class B Member. However, after the Development Period, the Board shall consist of at least three (3) individual Directors elected by the Members.

During the Development Period, the Directors need not be Members of the Association. After the end of the Development Period, Directors must be Members of the Association. Directors shall be elected for one (1) year terms of office and shall serve until their respective successors are elected and qualified. After the Development Period, any vacancy which occurs in the board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

3.06 Maintenance. The Association shall be authorized to landscape, maintain and repair Easements, rights-of-way, sidewalks, paths, Trails, drainage facilities, detention ponds, lakes, ponds and other areas of the Property, as appropriate.

3.07 Common Areas. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

3.07.01 To accept, own, operate and maintain all Common Areas which may be conveyed, shown on the Plat, or leased to it by DH, 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 DH; and to maintain in good repair and condition all lands, improvements, and other Association property owned by or leased to the Association, whether by DH or by other Persons.

3.07.02 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.

3.07.03 To execute mortgages, both construction and permanent, for construction of improvements on property owned by or leased to the Association and to accept land in Common Areas, whether or not improved, from DH 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 DH or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether DH 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 DH or the Association, as the case may be, but subject to the limitations imposed by this Declaration.

3.08 Association Powers. In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 3.04 of this Declaration, the Association, acting through the Board, shall have the power and authority:

3.08.01 To grant and convey portions of Association property, including fee title, leasehold estates, easements, rights-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, streets, 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 statute, rule, regulation, ordinance or other law of any governmental entity, including but not limited to rules and orders of the Texas Commission on Environmental Quality (TCEQ), and any flood plain, industrial waste or other ordinance of the City of College Station or Brazos County, as applicable.

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

3.08.03 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.

3.08.04 To own and operate any and all types of facilities for both active and passive recreation.

3.08.05 To construct new improvements or additions to Common Areas, subject to the approval of the ACC as required in this Declaration.

3.08.06 To enter into contracts with DH and other persons and entities, 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 DH or the Association in connection with the purposes of the Association.

3.08.07 To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

3.09 Agreements with Governmental Entities. The Association may enter into one or more agreements with the City of College Station, Brazos County or other municipal, state or federal with respect to the dedication of any drainage basin, park or other Common Area within the Property for municipal, state or federal maintenance, as applicable.

3.10 Telecommunication Services.

- (a) The Association, with the prior approval of the Board, may provide, either directly or by contracting with other parties, various telecommunication services to the Lots and Common Areas within the Subdivision. The Board shall have the sole discretion to determine whether or not such telecommunication services are provided, the types of services to be provided (including, without limitation, wireless broadband service), the manner in which such services will be provided, the amounts to be charged, and the method of paying for such services. The Association may include in the Assessment for each Lot the annual subscription fees for any telecommunication service arranged by the Association under this Section 3.10.
- (b) The telecommunication equipment, wiring and other facilities that are necessary to provide the telecommunication services for the Common Areas shall either be owned by the Association or the Association shall contract with other parties to provide such facilities on behalf of the Association. The cost and expense of constructing, installing, operating, maintaining, repairing and replacing such facilities shall be paid by the Association, and may be included as part of the annual assessments and special assessments to the Members.

- (c) The Association, in its sole and absolute discretion, may require each Dwelling Unit constructed on a Lot to include, at the Owner's expense, a Residential Service Unit ("RSU") to provide access to the residence for the telecommunication services described above. The ACC has issued or will issue Telecommunication Guidelines for the Dwelling Units in the Subdivision and may amend such Telecommunication Guidelines from time to time. All Dwelling Units are required meet the minimum requirements set forth in the Telecommunication Guidelines.
- (d) The Association and the parties with whom it contracts to provide services relating to the RSU shall have an easement and right of entry over and across each Lot and into each residence for the purpose of installing, maintaining, repairing and replacing and making improvements to the RSU.

3.11 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, arbitative, 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 4
RESTRICTIONS**

Each Lot conveyed by Declarant to an Owner shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

4.01 BUILDING, CONSTRUCTION, AND USE RESTRICTIONS

4.01.01 Design and Construction Approval. The design and construction of all Dwelling Units, Structures, Improvements and fences on the Property must have the prior written approval of the ACC. The process and requirements for ACC approval are set forth in Article 2.

4.01.02 Square Footage, Height Requirements. Except as otherwise approved by the ACC, no Dwelling Unit shall be constructed on any Lot specified below that has a heated living area of less than the square feet specified below, exclusive of porches (open or covered), decks, garages and carports:

Blocks 1 and 2, Phase One: 1,800 square feet

Except as otherwise approved by the ACC, no Structure constructed on any Lot shall exceed a height above ground level of thirty-three (33) feet. A Supplemental Declaration applicable to a portion of the Property may specify greater or lesser minimum square footage or height requirements for the Lots subject thereto. Each Owner is encouraged to contact the Association to verify the specific square footage requirements for such Owner's Lot.

4.01.03 Driveways. All driveways on a Lot must be constructed of asphalt or masonry grade concrete. All driveways require a culvert over the borrow ditch. The culvert may be constructed entirely of concrete or unexposed metal pipe with concrete end treatments. The size of the culvert pipe to be constructed on the driveway of a particular lot shall be as determined and approved by the ACC. The ACC may promulgate and amend from time to time "Culvert Design Guidelines".

4.01.04 Building Materials. Except as otherwise in this Section 4.01.04 or approved by the ACC, all Dwelling Units, Structures and Improvements on a Lot shall be of recognized standard construction quality, and all finished exterior coverings of the front and sides of each Dwelling Unit (exclusive of doors, windows, and similar openings) shall be constructed of at least seventy-five percent (75%) masonry or other materials specifically approved in writing by the ACC. If a Dwelling Unit is constructed more than one hundred feet (100') from the Access Road, the finished exterior coverings of the front and sides of the Dwelling Unit shall be constructed of at least fifty percent (50%) masonry. Masonry includes brick, rock and all other materials commonly referred to in the College Station, Texas area as masonry.

4.01.05 Structures on Lot. Only one single-family Dwelling Unit and appurtenances thereto such as garages, outbuildings, barns and the like, may be placed or constructed on each Lot.

4.01.06 Building Setbacks. Unless otherwise approved by the ACC, the following building set back lines shall govern each Lot:

- (a) On Lots with even lot numbers in Duck Haven, Phase One, no Improvement or Structure may be located nearer than fifty (50) feet to the front property line of a Lot or a property line abutting an Access Road.
- (b) On Lots with odd lot numbers in Duck Haven, Phase One, no Improvement or Structure may be located nearer than seventy-five (75) feet to the front property line of a Lot or a property line abutting an Access Road.
- (c) On Lots not reflected in Duck Haven, Phase One, the set back lines for such Lots will be designated by plat and/or Supplemental Declaration. However, in no event will the set back lines described herein be less than those set by governmental requirements.

4.01.07 Septic Systems. No 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. At any time prior to the construction of a Dwelling Unit on a Lot, the Association may require the Owners to connect to and be serviced by a sanitary sewer system designated by the Association, which may be a sanitary sewer system operated by the City of College Station, the Association, DH or any other provider.

4.01.08 Antennas and Communication Devices. No exterior antennas, aerials, satellite dishes, basket or other broadband reception device, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon a Lot, which is visible from any Access Road, Trail, Common Area or Dwelling Unit on another Lot. The ACC may require as much screening as possible while not substantially interfering with reception. Notwithstanding the foregoing, an exterior antenna may be constructed on a Lot in an area that is located behind the Dwelling Unit no closer than 250 feet to any public right of way and no closer than 45 feet to any property line of the Lot. All satellite dishes shall be located on the rear of the Dwelling Unit and not visible from the Access Road. DH and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than 1 meter

in diameter. No transmitting antenna's mast may exceed the height of the center ridge of the roofline of a building. No MMDS antenna mast may exceed the height of the center ridge of the roofline of a building. In lieu of broadband service, the Association may require an Owner to subscribe to a third party service to provide internet access, including without limitation ISDN or DSL service, to such Owner's Dwelling Unit. DH 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. The ACC may alter the provisions of this section with provisions set forth in the Telecommunications Guidelines. In the event of a conflict between this section and the Telecommunications Guidelines, the Telecommunications Guidelines shall prevail.

4.01.09 Storage of Building Materials. No building material of any kind or character shall be placed or stored upon any Lot more than thirty (30) days before construction of a Structure or Improvements are commenced, and then such material shall be placed within the building set back lines as established above. At the completion of such Structure or Improvements, such excess or scrap material must be immediately removed from the Lot.

4.01.10 Construction Debris. No stumps, trees, underbrush or any refuse of any kind or scrap material from Improvements being erected on any Lot shall be placed on any other Lot, the Access Roads, the Common Areas, Trails or Easements. No change of elevation on any Lake Lot greater than six (6) inches shall be made without the written approval of the ACC.

4.01.11 Change of Elevations. Exposed openings resulting from any excavation made of any Lot shall be backfilled and the disturbed ground shall be leveled. No change of elevation of any Lake Lot greater than six (6) inches shall be made without the written approval of the ACC.

4.01.12 Mailboxes. Mailbox stanchions must predominantly utilize materials also used predominantly in the construction of the exterior of Improvements on a Lot or used in the Subdivision entry feature. The design and construction of mailbox stanchion must have the prior written approval of the ACC. If DH or the Association supplies a designated postal box within the Subdivision for a Lot, then an Owner may be required to utilize the supplied box in lieu of a free standing mailbox on the Access Road in front of such Owner's Lot.

4.01.13 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 a Lot 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 ACC, except what has already been constructed by the City of College Station or Bryan or Brazos County, prior to date hereof; 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 ACC. 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 ACC.

4.01.14 Tanks. Except as otherwise approved by the ACC, all tanks for the storage of gas, propane or oil shall be installed below ground level. The ACC shall have the right to approve the location of any other type of tank used on a Lot. All tanks, if not buried as a result of ACC variance, shall be screened so as not to be visible from any other Lot, Access Road or Trail.

4.01.15 Wiring Requirements. The ACC has issued or will issue Wiring Guidelines for the Dwelling Units in the Subdivision and may amend such Wiring Guidelines from time to time. All Dwelling Units

are required to have a structured wiring system meeting the minimum requirements set forth in the Wiring Guidelines.

4.01.16 Completion of Construction. After commencement of construction of any Structure or Improvement, the work thereon shall be diligently prosecuted to the end that the Structure or Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

4.01.17 Fencing. All fences constructed on a Lot shall be of a size, design, color, location, height and material as determined and approved by the ACC. The ACC has issued Fencing Guidelines and may amend such Fencing Guidelines from time to time. Such Fencing Guidelines will include, without limitation, requirements regarding fence types, locations and quality of materials. Prior to designing, ordering or acquiring any fencing materials or designs for a Lot, all Owners should obtain the current version of the Fencing Guidelines from the ACC. No wire fence (hog wire, chicken wire or chain link) may be built on any Lot.

4.01.18 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, Structure, 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.

4.02 GENERAL RESTRICTIONS

4.02.01 Residential Use. Unless otherwise approved by DH or by the Association after the end of the Development Period, each Lot in the Subdivision shall be used only for non-commercial, single family residential and recreational purposes. Only single-family residential dwellings and appurtenances ordinary to residential living shall be permitted. To this end, without limitation, the following structures may not be built on any Lot (excluding any portion of the Property owned by DH) in the Subdivision; hospitals, clinics, rest homes, duplex houses, apartment houses, mobile homes, manufactured housing, hotels, or any retail wholesale, or other business or commercial establishments of any kind.

4.02.02 No Noxious Use. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done which may be or become an annoyance or nuisance to other Owners or the Subdivision.

4.02.03 No Commercial Activities. Unless approved in writing by the ACC, no commercial activity of any kind shall be conducted on any Lot (excluding any portion of the Property owned by DH). "Commercial activity" shall include but not be limited to, the offering for sale of any product or service, or the manufacture or growth of any product, for purposes of sale, without regard to whether such activities are conducted in or from a Dwelling Unit or otherwise. The ACC shall have the right and power to stop or restrict any such approved Commercial activity if the ACC determines in its sole discretion that the business or activity is detrimental to the Subdivision.

4.02.04 Animal Restrictions. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot within the Subdivision for commercial purposes. No swine or poultry 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 animals including dogs and cats will be allowed to roam free in the Subdivision. In the event any animal creates a nuisance to the Subdivision in the sole and exclusive opinion

of the ACC such animal will be removed from the Subdivision. The ACC 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. Each Lot shall be allowed one horse (or mare and colt less than 12 months) or other large animal unit per one (1) acre. A large animal unit means one horse, one mule, four (4) adult rabbits, one cow, one goat, one sheep or one llama. Cats and dogs shall not constitute animal units; however, the total number of cats and dogs on any Lot shall not exceed five (5).

4.02.05 Signs. No sign, except:

- (a) signs (not exceeding 5 square feet in size) advertising property for sale or rent;
- (b) not more than two (2) political signs;
- (c) school spirit signs; or
- (d) security signs, advertisement, billboard, or advertising structure of any kind may be erected or maintained on any Lot without the consent in writing of the ACC.

DH or the ACC shall have the right to enter and remove any such sign, advertisement, billboard or structure which is placed on any Lot without such consent, 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.

4.02.06 Disposal of Trash. No part of the Subdivision shall be used or maintained as dumping grounds for rubbish. Trash, garbage or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

4.02.07 Neat and Clean Condition. Owners shall not permit the accumulation of trash, rubbish, weeds, or other unsightly obstacles on their Lots or on the Easements or on the streets abutting the same. Each Owner shall be responsible for proper disposition of his trash and garbage. Owners must maintain all portions of their Lots visible from an Access Road, Trail, Common Area or Dwelling Unit on another Lot in a neat and clean condition.

4.02.08 Drainage Maintenance. Owners shall be responsible for keeping Drainage Easements and Drainage Maintenance Easements free of obstructions and shall not permit fences or other obstructions to be placed in said easements. Owners shall also be responsible for stabilization of slopes in Drainage Easements and Drainage Maintenance Easements.

4.02.09 No Pollution. No act may be performed which is likely to pollute the air or water in any part of the Subdivision, nor may any Owner violate any federal, state or local ordinance or regulation designed to eliminate pollution at that time in force.

4.02.10 Firearms. Except as otherwise provided herein, no firearms may be discharged in the Subdivision or on any Lot, Easement Area or Common Area.

4.02.11 Oil and Gas Drilling. No oil or gas drilling, boring, development, refining, quarrying or mining operations of any kind shall be permitted on the surface of any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted on the surface of any Lot. No derrick or other structures designed for use in boring or drilling for oil, natural gas, or other mineral shall be erected, maintained or permitted on 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.

4.02.12 No Vehicles in Common Areas. No motorized, including without limitation vehicles powered by electric, gasoline, diesel, propane or hydrocarbon-fueled engines, other than passengers of service automobiles shall be used in the Common Areas, used on paved areas designed for parking or vehicular traffic, including without limitation, on any Trails, and excluding any paved areas specifically designed for the parking or driving of automobiles; provided however, the Association and/or DH may use motorized vehicles on the Trails for the construction, maintenance, inspection and repair of the Trails. Bicycle use in the Common Areas is restricted on Trails as provided by Section 4.04.03 and may be restricted in other portions of the Common Areas to areas designated by the Association.

4.02.13 Lot Subdivision Restrictions. No Lot may be subdivided into smaller lots within twenty-five (25) years after the date of this Declaration, without the prior written consent of DH. This provision does not apply to any portion of the Property owned by DH.

4.02.14 Storage of Vehicles. No trailer, recreational vehicle, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of a Lot visible from an Access Road or another Lot for more than forty-eight (48) hours in a thirty (30) day period. No large commercial truck (larger than a standard pickup) or 18 wheel truck shall be kept, parked, stored or maintained on any portion of a Lot or on an Access Road, unless such truck is a provider of equipment or services to a Lot and in no such case shall such a vehicle be parked overnight on an Access Road or Lot.

4.03 RESTRICTIONS FOR WATERWAYS AND LAKES

**** Any changes to these Restrictions regarding any Lake(s) or to the operation or conditions of any Lakes should not be made without first taking the necessary actions as required by any and all governmental authorities having jurisdiction over the Lake(s).****

4.03.01 Construction on Lake. Unless the prior written approval of DH or, after the Development Period, the Association is obtained, which approval may be withheld by DH or the Association, as applicable, in their sole and absolute discretion:

- (a) no wharf, pier, bulkhead, or other structure or obstruction shall be built or maintained into or upon any Waterway or Lake. No structure or obstruction shall be permitted if it offers any threat whatsoever to safe navigation upon such Waterway or Lake or to the safe and convenient use of such Waterway or Lake as a recreation facility.
- (b) no boat canal shall be constructed or installed upon any Lot nor shall any facility or device be constructed or installed upon any Lot which shall in any way alter the course or boundaries of any Waterway or Lake, or which shall involve or result in the removal of water from any Waterway or Lake.
- (c) no boats, hoists, launching facilities or any similar type of structures or equipment shall be installed, constructed or maintained upon any Lot, nor shall any boat trailer be stored on any Lot in such manner as to violate the regulations of the Association.

4.03.02 Boats. No boat powered by gasoline, diesel, propane or hydrocarbon-fueled engine of any kind shall be operated upon any Waterway or Lake without the prior written approval of the Association. Boat operation on any Waterway shall conform to all rules and regulations promulgated by:

- (a) Association; and
- (b) applicable governmental authorities concerning the use of the boats.

The Association may further, by rule, regulate and limit the size, type and number of water craft used on a Lake or Waterway.

4.03.03 Fishing Regulation; Lake Rules. A limit of the type and quantity of fish taken from a Lake or Waterway may be established by rules of the Association from time to time. Owners and their family, guests and tenants shall comply with all applicable government regulations relating to fishing on the Lakes and Waterways. The Association may establish other rules concerning the use of the Lakes and Waterways by the Owners and their family, guests and tenants.

4.03.04 No Removal of Water. No water may be pumped or otherwise removed from a Lake or Waterway for the private use of any Owner.

4.03.05 Erosion Control. The Owner of each Lake Lot shall be responsible for all temporary erosion control measures required during construction on his Lot to ensure that there is no erosion into any Lake and such Owner shall be responsible for any repair or maintenance required due to erosion caused by construction on his Lot. The Owner of each Lot shall utilize the current and best stormwater management practices on his Lot.

4.03.06 Shoreline Clearing Restrictions. The Owner of any Lake Lot may not clear, disturb or remove natural shoreline vegetation existing along the shore of such Lake Lot without the prior approval of the ACC. The ACC will allow the Owner to clear no more than forty percent (40%) of the natural shoreline vegetation located within one hundred feet (100') of the shoreline existing as of the date hereof provided the Owner complies with the provisions of Article 2 in seeking the ACC's approval. For each ten percent (10%) of shoreline vegetation cleared by Owner, the ACC may require the Owner to plant, within one hundred feet (100') of the property line abutting the Lake, at least one disease resistant hybrid live oak tree with a minimum diameter of two inches (2") and a minimum height of six feet (6').

4.03.07 No Dumping. No sewer, drain or other waste water, other than natural watershed drainage, shall be permitted by any Owner to empty, directly or indirectly, into a Lake or Waterway. No Owner or occupant of a Lake Lot shall dump or place refuse or any other material into a Lake.

4.03.08 No Release of Wildlife. No Owner or occupant of any Lake Lot shall release or introduce any wildlife, waterfowl, reptiles or fish into a Lake or the Subdivision.

4.04 RESTRICTIONS RELATING TO CONSERVATION DEVELOPMENT

The Duck Haven Estates is intended to be a conservation development. This means Owners shall take proactive actions necessary to minimize destruction and disturbance of natural habitats including but not limited to: plant, animal, resident and migratory bird and aquatic species.

4.04.01 Landscape Buffer. On each Lot between the front property line adjacent to the Access Road and the front building line of the Dwelling Unit, the Owner shall maintain at least one landscape buffer area with dimensions of at least twenty feet (20') by forty feet (40'). The landscape buffer area shall remain in a natural, undisturbed state that includes, without limitation, all trees and understory plants.

4.04.02 Trees. Any live tree located on or within ten feet (10') of the ACC approved driveway and slab location of any Improvement on a Lot may be removed. All other trees on a Lot are subject to the following restrictions:

- (a) Lot Size of Two Acres or Less: Any live tree with a trunk diameter/caliper measured from three feet (3') off the ground, equal to or greater than four inches (4") in diameter/caliper may not be removed without ACC approval.
- (b) Lot Size of Two Acres or More: Any live tree with a trunk diameter/caliper measured from three feet (3') off the ground, equal to or greater than six inches (6") in diameter/caliper may not be removed without ACC approval.

4.04.03 Trails. There are or will be trails on the Property which may lead to a park, sport court and other contemplated Common Areas. The Trails are designated on the Plat as Private Trails or may be designated by the Association from time to time in the Common Areas. No vehicles powered by battery, gasoline, diesel, propane or hydrocarbon-fueled engines shall be used on the Trails; provided however, DH and the Association may use motorized vehicles on such riding trails for the construction, maintenance, inspection and repair of the Trails. No bicycles shall be used on any Trail unless the Association specifically designates that bicycles may be used on such Trail. No animals, other than domestic pets on leash, may access the Trails.

4.04.04 Conservation Areas, Corridors & Parks. The Subdivision may contain conservation corridors and private parks, which may include the Trails and portions of the Common Areas. The Association will maintain CAC&P plans and post seasonal rules and restrictions for permitted uses in the CAC&P. Each park, corridor or area has been set aside, enhanced and/or is managed for specific habitat, aquatic or wildlife management for species indigenous to that area or region of the Property. No Owner, tenant, guest or invitee of an Owner may disturb or harm any plants, trees or animals in the CAC&P areas.

4.04.05 Streams, Channels, Creeks, Borrow Ditches and Waterways. All Waterways, Drainage Easements and Riparian Management Easements, are regulated by the Association through the ACC and may not be impacted by any activity of an Owner on his Lot without written approval of the ACC to be granted or denied in its sole and absolute discretion. No Owner shall impede, restrict, dam or alter any Waterway. Some but not all of the restricted areas may be reflected on the Plat(s) as Drainage Easements and other restricted areas may be reflected and described on a Stream Map and Identification Table to be prepared and modified from time to time by the ACC in its sole and absolute discretion. Notwithstanding the foregoing, if a channel or Waterway exists with a visible high water mark that is not reflected to be subject to a drainage easement on the Plat or on the Stream Map and Identification Table, then, the channel/Waterway shall be subject to the Riparian Management Easement described in Section 8.06 below.

ARTICLE 5 WATER SERVICE; NO PRIVATE WELLS

The Subdivision is serviced by a special utility district. Each Lot Owner desiring said water service shall be required to contract directly with the special utility district. The cost of water, tap fees, membership fees, expansion reserve fees, installation fees, monthly use fees and meters shall be subject to the fee schedule of the special utility district and paid by the Lot Owner. 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.

**ARTICLE 6
RIGHTS OF ENJOYMENT IN THE COMMON AREAS**

6.01 Easement. Subject to the provisions of Sections 6.02 through 6.07, each and every Owner in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Areas, and such easement shall be appurtenant to and shall pass with every Lot, provided the conveyance and transfer is accomplished in accordance with this Declaration. All Owners in good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Areas for so long as they are Members in good standing with the Association.

6.02 Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

6.02.01 The right of DH or the Association to prescribe reasonable regulations and policies governing, and to charge reasonable expense reimbursements and/or related to, the use, operation and maintenance of the Common Areas;

6.02.02 Liens or mortgages placed against all or any portion of the Common Areas with respect to monies borrowed by the DH to develop and improve the Property or Common Areas or by the Association to improve or maintain the Common Areas;

6.02.03 The right of the Association to enter into and execute contracts with any party (including, without limitation, the DH or its affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

6.02.04 The right of the DH or the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

6.02.05 The right of the DH or the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operation for the purpose of extending cable or utility or security service on, over or under the Common Areas to ultimately provide service to one or more of the Lots;

6.02.06 The right of the DH or the Association in accordance with the requirements of the Texas Property Code to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which non-compliance with this Declaration exists, and otherwise for any period deemed reasonable by the Association for any infraction of the then-existing rules and regulations and/or Architectural Guidelines;

6.02.07 The right of the DH and/or the Association to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the DH and the Board; and

6.02.08 The right of the DH and/or the Association to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes necessary for the proper operation of the Subdivision.

6.03 Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would

be in violation of any law or any rule or regulation promulgated by the Board.

6.04 Delegation of Use; Damage to the Common Areas. Each Member shall have the right to extend his right of enjoyment to the Common Areas to the members of his family and to such other persons as may be permitted by the Association and subject to the rules of the Association concerning use of the Common Areas. An Owner shall be deemed to have made a delegation of all such rights to the tenant of any leased residence and such Owner shall not have the right to use the Common Areas during such tenancy. Each Member shall be liable to the Association for any damage to any portion of the Common Areas caused by the negligence or willful misconduct of the Member or his family, guests and/or tenants.

6.05 Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

6.06 Use of Common Areas. The Board shall have the power and authority to prescribe rules and regulations, which extend to and cover matters such as (but not limited to) the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, types of uses allowed on the Trails and CAC&P and the supervision by attending adults of children. No person or entity (excluding DH) shall use any portion of the Common Areas to:

6.06.01 solicit, promote or conduct business, religious, political or propaganda matters;

6.06.02 distribute handbills, newsletters, flyers, circulars or other printed materials,

without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion). The Association may permit and allow reasonable activities to occur on the Common Areas in accordance with rules and regulations deemed reasonable and appropriate by the Association.

6.07 User Fees and Charges. The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Areas and services that the Board determines to be necessary for the advancement, benefit and welfare of the Owners. Examples (by way of illustration, and not limitation) of these special charges and fees would include: extraordinary utility consumption; additional security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. In establishing special user fees, the Board may formulate reasonable classifications of users. Such fees should be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of this Declaration.

6.08 Encroachments. If:

- (a) construction, reconstruction or repair activities which have been approved by the ACC; or
- (b) shifting, settlement or other movements of any portion of ACC approved improvements;

results either in the Common Areas encroaching on a Lot or Dwelling Unit or in a Lot or Dwelling Unit encroaching on the Common Areas or on another Lot or Dwelling Unit, and unless otherwise directed by the ACC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

**ARTICLE 7
FUNDS AND ASSESSMENTS**

7.01 Assessments. 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 among all Lots, provided, however, that no Assessments hereunder shall be levied against DH. 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. 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.

7.02 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.

7.03 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 this Declaration, including but not limited to the cost of all Common Area, right-of-way, Trails and Lake maintenance, the cost of enforcing this Declaration, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net 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 annually in advance 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 of each month, or in such other manner as the Board may designate in its sole and absolute discretion. Assessments or installments of assessments not paid as provided herein are delinquent.

7.04 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 the functions of the Association under this Declaration. The amount and due date of any Special Assessments shall be at the reasonable discretion of the Board.

7.05 Owner's Personal Obligation for Payment of Assessments; Late Fees. 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 7.01 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 on the delinquent Assessment 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. Additionally, if an Assessment or installment of an Assessment is not paid when due, an additional amount of five percent (5%) of such Assessment or installment (the "Late Fee") shall be immediately due and payable, provided the Late Fee may be reduced or waived by the Association for good cause. The Late Fee is assessed to compensate for the administrative costs and expenses of collection of the Assessments.

7.06 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in Section 7.05 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 in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination shall be effectuated by an officer of the Association, duly authorized by the Board. To evidence an Assessment lien, the Association may, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for payment of Assessments shall attach with the priority above set forth, from the date that much payment becomes delinquent, and, subject to the requirements of the Code (as defined in Section 7.08) 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 secured by a deed of trust 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.

Except as otherwise provided, upon closing of the initial sale of each Lot, the purchaser shall pay dues in the amount of dues set by the Association for each full calendar month until the end of the current year. Said dues will be paid to the Association or accumulated by DH in the absence of an Association. Said funds will be utilized by DH solely for maintenance of Common Areas and the balance shall be paid to the Association when it is formed. The Association shall have the right to designate any other event after closing the initial sale of a Lot as the date upon which the Owner will be obligated to begin paying dues to the Association.

The terms of this Article 7 are subject to the requirements of Chapter 209, Texas Property Code, as amended from time to time (the "Code").

**ARTICLE 8
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, rights-of-way, restrictions, and related rights made by DH 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 DH conveying any part of the Property. DH reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the Property. Further, DH 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 ten (10) feet on each side of such Lot line. The easement areas described in this Section 8.01 and Section 8.02 shall be known as "Reserved Easement Areas".

8.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property. 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 Reserved Easement Area of each Lot and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

8.03 Surface Areas. The surface of Reserved Easement Areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither DH 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 reasonably 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 ACC 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 those 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 ACC. Collectively, the drainage easements shown on the Plat, if any, and the drainage easements defined in this Declaration shall be known as "Drainage Easements."

8.05 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Areas for the purpose of enforcing the Covenants in accordance with Section 9.13 hereof, and for the construction of a common cable television or other telecommunications 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.

8.06 Riparian Management Easement. On each Lot, there is hereby retained in favor of DH and the Association a perpetual seventy-five foot (75') easement or such greater easement area as may be determined by the ACC and identified on the Stream Map and Identification Table, riparian management easement located on either side of any creek, channel, tributary or other Waterway located on such Lot for the purpose of maintaining such Waterway and drainage way, maintaining wildlife habitat, erosion control and other work necessary or desirable in connection with the Waterway. An entry upon any Lot by DH or the Association to effectuate the foregoing purposes shall not be deemed as trespass. Neither DH nor the Association shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the vegetation in the Riparian Management Easement as a result of any activity reasonably related to the purpose of the Riparian Management Easement.

**ARTICLE 9
MISCELLANEOUS PROVISIONS**

9.01 Applicability. This Declaration is adopted as part of and, except as expressly provided herein, shall apply to each and every Lot in the Subdivision. This Declaration is equally for the benefit of all subsequent Owners of Lots in the Subdivision and accordingly, shall be covenants running with the land. Any Owner or lienholder of any of the Property or the Association shall have the power to prosecute in the appropriate court a suit at law or in equity to prevent any violation or attempted violation of this Declaration and to recover damages for any violation or attempted violation including, but not limited to, reasonable

attorney's fees; provided, however, that this clause shall not restrict any governmental agency from acting to enforce any of the restrictions contained in this Declaration.

9.02 Term. The term of this Declaration shall be for a period from the filing of this instrument for record in Brazos County, Texas, until the 1st day of January, 2033, after which such date this Declaration shall be automatically extended for successive periods of ten (10) years each, unless and until by instrument executed by the then record Owners of a majority of the Lots in the Subdivision and duly recorded in Official Records of Brazos County, Texas, the Declaration is altered, rescinded, modified or changed, in whole or in part.

9.03 Mortgagee. Nothing contained in this document, nor any violation of any provision of this Declaration shall have the effect of impairing or affecting the rights of any mortgagee, or trustee under any mortgage or deed of trust outstanding against all the Subdivision or any portion thereof.

9.04 Assignment of DH Rights and Duties. Any and all of the rights, powers, duties and reservations of DH under this Declaration may be assigned by DH to any person, which assumes all of the particular rights, powers, duties and reservations assigned. The easements and rights-of-way reserved by DH in Article 8, may be assigned, transferred or terminated by DH without notice. If DH assigns its other rights, powers, duties and reservations under this Declaration, DH shall:

- (a) furnish notice to the Association; and
- (b) notify all of the then Owners in any reasonable manner selected by DH, including publication of such notice in a newspaper or newspapers circulated in Brazos County.

Upon the occurrence of such assignment and the giving of such notice, DH (its employees, shareholders, directors or officers) shall be released and relieved from any and all liability and obligations imposed upon it or them by this Declaration. Should DH cease to exist without having assigned to any person all of the rights, powers, duties and reservations of DH contained in this Declaration, then all of such rights, powers, duties and reservations of DH shall automatically vest in the Association.

9.05 Run With Land. Every person who now or hereafter owns or acquires any right, title or interest in or to any property in the Subdivision is and shall be conclusively deemed to have consented and agreed to every covenant, condition, reservation and restriction contained herein, whether or not any reference to this declaration is contained in the instrument by which such person acquires an interest in the property.

9.06 Deviations. DH 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 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.

9.08 Enlargement or Reduction of the Property. At any time and from time to time, DH shall have the right, without the joinder or consent of the Association or the Owners, to add additional property to the land then comprising the Property. As used herein, "Additional Property" shall mean and refer to lands now owned or hereafter acquired by DH that DH wishes to make subject to this Declaration.

The addition of the Additional Property or portions thereof to the Property shall be accomplished by the filing in the Official Records of Brazos County an instrument describing the Additional Property to be annexed and annexing such Additional Property so described to the Property, thereby imposing this

Declaration, as amended from time to time with such additional modifications and additions described in such instrument, upon the Additional Property. Upon the filing of such an instrument, that the Additional Property shall become a part of the Property and the collected assessments applicable to all Lots, including similar assessments then applicable to the Additional Property, may be commingled by the Board and expended for the benefit of the Property, as enlarged, as determined by the Board. DH may add Additional Property to the Property as many times as DH, in its sole and absolute discretion, determines such additions may be in the best interests of the overall development of Indian Lakes. Each Owner, by virtue of acceptance of any instrument conveying an interest in a Lot subject to this Declaration, acknowledges and agrees that the addition of Additional Property to the Property may result in an increase in the Assessments, a dilution of their ownership percentage of the Property and a concomitant reduction in their voting rights hereunder, and each Owner, by its acceptance of the instrument conveying an interest in a Lot, agrees to the provisions of this Section 9.08 permitting the adding of Additional Property to the Property. DH shall have no obligation to impose this Declaration on any other land owned by DH and nothing contained in this Declaration shall be deemed to create or give rise to any legal or equitable right, servitude, easement or other interest in or to any other lands now owned or hereafter acquired by DH, unless and until such lands are expressly made subject to this Declaration by virtue of the recordation of an instrument imposing this Declaration upon such land in accordance with this Section 9.08.

At any time and from time to time, DH shall have the right, without the joinder or consent of the Association or Owners to remove any portion of the Property owned by DH from the land then comprising the Property. DH may remove portions of the Property as many times as DH, in its sole and absolute discretion, determines. The removal shall be accomplished by the filing in the Official Records of Brazos County an instrument describing the portion of the Property to be removed, thereby freeing such portion of the Property from the terms of this Declaration, as amended from time to time.

9.09 Amendment. During the Development Period, this Declaration may be amended by Developer without joinder or consent of any of the Owners. After the Development Period, this Declaration may be amended, but not terminated, by amendment approved by the Owners holding not less than sixty-six and two-thirds percent (66-2/3%) of the votes in the Association as of the first day of the month in which such amendment is made effective. Any amendment effective prior to January 1, 2028, must also be approved by DH if DH owns any part of the Property, and DH, in its sole and absolute discretion, may withhold its consent. Any termination or amendment to this Declaration shall be documented by an instrument signed and acknowledged by DH if during the Development Period or, if after the Development Period, by the President and Secretary of the Association and DH (if prior to January 1, 2028) setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty-six and two-thirds percent (66-2/3%) of the number of votes entitled to be cast.

9.10 Failure to Enforce Covenants. The failure of DH, the Association, the Owner of any Lot, or their respective legal representatives, heirs, successors and assigns, to enforce this Declaration or any portion thereof shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such other violation or breach occurring prior or subsequent thereto.

9.11 Covenants Do Not Create Reversion. No covenant herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

9.12 Relief for Violation or Breach. Damages shall not be an adequate remedy for any breach or violation of any provision hereof. Accordingly, any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, specific performance, recovery of damages or any other available relief either at law or in equity.

9.13 Enforcement of Covenants. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Member, guest, tenant and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their guests, tenants and invitees. The lien granted in Article 7 above shall extend to, cover and secure the proper payment and performance by each and every Member, guest, tenant and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the "good standing" qualifications of Members and residents of such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property. Any person who either:

- (a) brings suit to enforce this Declaration and prevails therein; or
- (b) otherwise incurs legal fees in enforcing the covenants contained in this Declaration, shall be entitled to recover court costs and reasonable attorneys' fees from the person against whom the covenants are enforced.

9.14 Alteration of this Declaration. No change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

9.15 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 9.15 with respect to an assignment by the Association to a successor entity.

9.16 Definition of "Titles". All titles or headings of the articles and sections herein are for the purpose of reference only and shall not be deemed to limit, modify, or otherwise affect any of the provisions hereof. All references to singular terms shall include the plural where applicable, and all references to the masculine shall include the feminine and the neuter.

9.17 Notices. Any notice given or required to be sent under the provisions of this Declaration shall be deemed to have been properly given when given in writing; and

- (a) delivered personally;
- (b) delivered to a reputable overnight delivery service providing a receipt; or
- (c) deposited in the United States mail, postage prepaid and registered or certified, return receipt requested, to the last known address of a person to whom notice is to be given.

The address for each Owner shall be at the Lot or Lots owned by such Owner unless the Owner furnishes written notice of another address to the party by giving a notice as provided herein. The effective date of any notice as provided herein (the "Effective Date") shall be the date of personal service, one (1) business day

after delivery to such overnight service, or three (3) business days after ~~being deposited in the United States~~ mail, whichever is applicable. 259

9.18 Mutuality, Reciprocity, Runs with Land. All covenants, restrictions, easements, charges and liens contained in this Declaration:

- (a) are made for the direct, mutual and reciprocal benefit of the Property and each Lot therein;
- (b) shall create mutual, equitable servitudes and reciprocal easements upon each Lot, in favor of every other Lot (except as otherwise herein provided);
- (c) shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all Owners of the Lots and their respective heirs, successors and assigns; and
- (d) shall, as to the Owner of each Lot and their respective heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots, and the present and future Owners thereof.

The foregoing shall in no way create a mutual, equitable servitude or reciprocal easement with respect to the use restrictions.

9.19 No Warranty of Enforceability. While DH 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, DH 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 DH harmless therefrom.

9.20 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.

9.21 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.

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

9.23 Conflict. With respect to any Lot, in the event of a conflict between the terms of this Declaration and the plat upon which the Lot is described, the most restrictive provision or standard shall apply.

Dated this 30 day of September, 2003.

Declaration of Covenants, Conditions, Reservations and Restrictions of Duck Haven Estates

DUCK HAVEN, LTD.
a Texas limited partnership

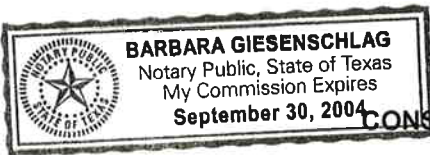
By: DUCK HAVEN MANAGEMENT, LLC
its general partner

By: *Paul J. Clarke*
Paul J. Clarke, Manager

STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the 30th day of September, 2003 by Paul J. Clarke, Manager of Duck Haven Management, LLC, as general partner of Duck Haven, Ltd., a Texas limited partnership, on behalf of said partnership.

Barbara Gieseenschlag
Notary Public, State of Texas



CONSENT AND SUBORDINATION BY LIENHOLDER

Lienholder, as the holder of the lien on a portion of the Property, consents to the foregoing Declaration and the covenants, conditions, restrictions and easements contained therein, and lienholder hereby subordinates its lien to the rights and interests of the Declaration, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the Declaration.

THE FROST NATIONAL BANK

By: *Greg Minnich*
Name: Greg Minnich
Title: Senior Vice President

THE STATE OF TEXAS § (ACKNOWLEDGMENT)
COUNTY OF Tarrant §

This instrument was acknowledged before me on the 18 day of February, 2004, by Greg Minnich, SUP of The Frost National Bank, on behalf of said banking institution.

Diana McDowell
Notary Public, State of Texas

AFTER RECORDING RETURN TO:
CHARLES A. ELLISON, P.C.
P.O. BOX 10103
COLLEGE STATION, TX 77842



Declaration of Covenants, Conditions,
Reservations and Restrictions
of Duck Haven Estates

EXHIBIT A

LEGAL DESCRIPTION

186.08 Acres
B. McGregor Survey, A-170
Brazos County, Texas

Field notes of a 186.08 acre tract or parcel of land, lying and being situated in the B. McGregor Survey, Abstract No. 170, Brazos County, Texas, and being part of the called 188.04 acre - Tract described in the deed from Thousand Oaks Development Company Joint Venture, to Smiling Mallard Development, Ltd., as recorded in Volume 4011, Page 142, of the Official Records of Brazos County, Texas, and said 186.08 acre tract being more particularly described as follows:

BEGINNING at the east corner of the beforementioned 188.04 acre tract in the southwest right-of-way line of the Union Pacific Railroad (formerly Southern Pacific Railroad - 100' right-of-way);

THENCE S 45° 00' 00" W along the southeast line of the beforementioned 188.04 acre tract, same being the west line of the Lena Fachorn - called 459.02 acre - 1st Tract described in Volume 1549, Page 80, of the Official Records of Brazos County, Texas, at a distance of 2.28 feet, pass a 2" iron pipe found at a crosstie fence corner, continue on, adjacent to a fence, for a total distance of 2268.22 feet to a ½" iron rod found marking the east corner of a 1.97 acre tract described in the deed to Millican Royalty and Land Trust, recorded in Volume 4012, Page 1, of the Official Records of Brazos County, Texas;

THENCE along the northeast, northwest and southwest lines of the beforementioned 1.97 acre tract, as follows:

N 53° 34' 25" W	for a distance of 333.73 feet to a ½" iron rod found,
S 45° 00' 00" W	for a distance of 220.03 feet to a ½" iron rod found,
S 39° 48' 20" E	for a distance of 331.36 feet to a ½" iron rod found marking the south corner of the said 1.97 acre tract in the common line between the said 188.04 acre tract and the Lena Fachorn - 459.02 acre - 1 st Tract;

THENCE S 45° 00' 00" W along the common line between the beforementioned 188.04 acre tract and the Lena Fachorn - 459.02 acre - 1st Tract, adjacent to a fence, for a distance of 661.98 feet to a ½" iron rod found at a 6" creosote post fence corner marking the occupied south corner of the 188.04 acre tract, same being a west corner of the 459.02 acre tract and same being in the most easterly northeast line of the Wade - called 503.39 acre - 1st Tract described in Volume 159, Page 201, of the Deed Records of Brazos County, Texas;

THENCE N 44° 57' 07" W along the southwest line of the beforementioned 188.04 acre tract, same being the most easterly northeast line of the beforementioned 503.39 acre tract, adjacent to a fence for a distance of 2765.88 feet to a ½" iron rod found at a crosstie fence corner marking the west corner of the 188.04 acre tract, same being the interior ell corner of the 503.39 acre tract;

THENCE N 44° 01' 36" E along the northwest line of the beforementioned 188.04 acre tract, same being a southeast line of the beforementioned 503.39 acre tract, adjacent to and northwest of a fence line, at a distance of 1859.1 feet, a 12" post oak tree fence corner at the west end of a fenced enclosure surrounding the production pad for the Millican-Havens #1 well (now plugged & abandoned) bears southeast - 1.0 feet, at a distance of 2375.0 feet, a 6" Elm tree fence corner at the north end of said fenced enclosure bears southeast - 1.0 foot, continue on, at a distance of 2751.0 feet, pass a crosstie fence corner in the southeast right-of-way line of the beforementioned Union Pacific Railroad (this crosstie marks the beginning of a 200' wide right-of-way portion of said railroad and said 200' wide right-of-way extends northwesterly from this crosstie fence corner), continue on for a total distance of 2796.16 feet to a ½" iron rod set at the north corner of the 188.04 acre tract in the southeast right-of-way line of said Railroad (100' wide right-of-way) from which a 6" creosote post fence corner bears N 44° 01' 36" E - 0.6 feet;

EXHIBIT A

LEGAL DESCRIPTION

186.08 Acres
B. McGregor Survey, A-170
Brazos County, Texas
Continued - Page 2

THENCE S 53° 43' 41" E along the southeast right-of-way line of the beforementioned Union Pacific Railroad (100' right-of-way), adjacent to a fence, at a distance of 1094.1 feet, pass a 6" creosote post fence corner, continue on for a total distance of 1105.65 feet to a ½" iron rod set at the north corner of the E. Jordan, Jr. - called 5.00 acre tract described in Volume 344, Page 293, of the Deed Records of Brazos County, Texas, said ½" iron rod set being in the northwest edge of an 8' wide gravel lane which crosses said railroad and provides access to F.M. No. 2154, and a ½" iron rod found bears S 50° 02' 58" E - 30.21 feet;

THENCE along the common lines of the beforementioned 188.04 acre and 5.00 acre tracts as follows:

- S 44° 34' 22" W at a distance of 131 feet, cross the center of said gravel lane, continue on, adjacent to the fenced southeast line of said lane, for a total distance of 453.28 feet to a ½" iron rod found at the west corner of the 5.00 acre tract and an interior ell corner of the 188.04 acre tract, from which a crosstie fence corner bears N 23° 47' 57" W - 4.0 feet, and a ½" iron rod found bears S 45° 25' 38" E - 30.51 feet,
- S 45° 25' 38" E adjacent to a fence, for a distance of 449.84 feet to a ½" iron rod found marking the south corner of the 5.00 acre tract and an interior ell corner of the 188.04 acre tract, from which a 4" creosote post fence corner bears N 00° 06' 45" W - 1.7 feet,
- N 44° 34' 22" E adjacent to a fence, at a distance of 516.54 feet, pass a ½" iron rod found at a creosote post fence corner, continue on for a total distance of 518.91 feet to the southeast right-of-way line of the beforementioned Union Pacific Railroad;

THENCE S 53° 43' 41" E along the southeast right-of-way line of the beforementioned Union Pacific Railroad adjacent to a fence, for a distance of 1286.09 feet to the PLACE OF BEGINNING, containing 186.08 acres of land, more or less.

Filed for Record in:
BRAZOS COUNTY

On: Sep 30, 2003 at 03:28P

As a
Recording

Document Number: 00831841

Amount 85.00

Receipt Number - 227423

By:
Betty King

STATE OF TEXAS COUNTY OF

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 named records of:
BRAZOS COUNTY
as stamped hereon by me.

SEP 30, 2003

HARRIETTE KAREN MONTGOMERY, COUNTY CLERK
BRAZOS COUNTY