

FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
OF
DUCK HAVEN ESTATES

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of the Duck Haven Estates, is made effective as of the 28th day of July, 2006, by Duck Haven, Ltd, a Texas limited partnership (hereinafter sometimes referred to as "DH"):

WHEREAS, DH desires to amend the Declaration for two purposes: first, a new tract, which had previously been designated for the production of the mineral estate, is to be added to the land covered by the Declaration; and second, the restrictions preventing the development of the mineral estate shall be removed from a specified tract covered by the Declaration;

WHEREAS, DH filed that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DUCK HAVEN ESTATES as recorded in Volume 5639, Page 153 of the Official Records of Brazos County, Texas (the "Declaration"), and the Declaration, as amended from time to time, is incorporated herein by reference;

WHEREAS, terms not otherwise defined herein shall have the meaning set forth in the Declaration;

WHEREAS, pursuant to Section 9.08 of the Declaration, DH has the right to add Additional Property to the land comprising the Property subject to the Declaration by filing an instrument describing the Additional Property to be annexed and annexing such Additional Property to Property; and

WHEREAS, DH desires to annex that certain 1.97 acre tract, which is more particularly described on Exhibit A attached hereto and incorporated herein (the "Added Property"), to the Property subject to the Declaration;

WHEREAS, pursuant to Section 9.09 of the Declaration, DH has the right amend the Declaration during the Development Period by signing and filing an acknowledged instrument documenting the amendment;

WHEREAS, the Development Period is still ongoing, and DH desires to amend the Declaration to allow for a new site for the development of the mineral estate under the

Property, and such amendment was necessitated by the mineral owner's conveyance of the 1.97 acre tract referenced above (from which development of the mineral estate was allowed) to DH for inclusion in the Property;

WHEREAS, DH desires to amend certain restrictions in the Declaration as they relate to that certain 3.00 tract, which is more particularly described on Exhibit B attached hereto and incorporated herein (the "New Drillsite"), so as to allow for the production of the mineral estate under the Property from the New Drillsite;

NOW THEREFORE, the Added Property is hereby annexed to the Property subject to the Declaration, and the Declaration, as may be amended from time to time, is imposed on the Added Property.

FURTHER, the Declaration is hereby amended to allow for the New Drillsite so that a Section 4.05 shall be added to the Declaration, and such Section 4.05 shall read as follows:

"Section 4.05 **MINERAL DEVELOPMENT**

Notwithstanding anything to the contrary herein, that certain 3.00 acre portion of the Property which is more particularly described on Exhibit B attached hereto and incorporated herein, may be used for the production and development of the mineral estate under the Property, including any and all activities which are customarily incident to such production and development. Further, and by way of example and not limitation, the restrictions of Section 4.02.11 shall not apply to such 3.00 acre tract."

Dated this 28th day of July, 2006.

DUCK HAVEN, LTD.
a Texas limited partnership

By: DUCK HAVEN MANAGEMENT, LLC
its general partner

By: 
Paul J. Clarke, Manager

STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the 28th day of July, 2006 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.



Bradley T. Sharpe
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 amendment to the 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: [Signature]
Name: LARRY CHILTON
Title: EXECUTIVE VICE PRESIDENT

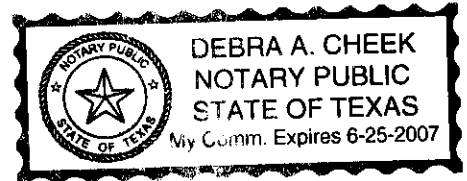
THE STATE OF TEXAS § (ACKNOWLEDGMENT)

COUNTY OF TARRANT §

This instrument was acknowledged before me on the 19th day of July, 2006, by Larry Chilton, Executive Vice President of The Frost National Bank, on behalf of said banking institution.

Debra A. Cheek
Notary Public, State of Texas

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



1.97 Acre Drillsite Tract
Lot 45, Block 1
Duck Haven Subdivision
B. McGregor Survey, A-170
Brazos County, Texas

Field notes of a 188.04 acre tract or parcel of land, lying and being situated in the B. McGregor Survey, Abstract No. 170, Brazos County, Texas, and being all of the called 186.335 acre - Tract 4 described in the deed from Brazos Coal, Limited to Thousand Oaks Development Company Joint Venture, as recorded in Volume 1454, Page 187, of the Official Records of Brazos County, Texas, and said 188.04 acre tract being more particularly described as follows:

COMMENCING at the east corner of the beforementioned 186.335 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 186.335 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 cross tie fence corner, continue on, adjacent to a fence, for a total distance of 2268.22 feet to a 1/2" iron rod set for the PLACE OF BEGINNING of this description;

THENCE S 45° 00' 00" W continue along the common line between the beforementioned 186.335 acre tract and the 459.02 acre tract for a distance of 299.79 feet to a 1/2" iron rod set, a 1/2" iron rod found at 6" creosote post fence corner found marking the occupied south corner of the said 186.335 acre tract bears S 46° 00' W - 961.76 feet;

THENCE N 39° 48' 20" W 331.36 feet to a 1/2" iron rod found in the proposed southeast right-of-way line of Flyaway Drive (70' right-of-way);

THENCE N 45° 00' 00" E along the southeast right-of-way line of Flyaway Drive for a distance of 220.03 feet to a 1/2" iron rod set;

THENCE S 53° 34' 25" E 333.73 feet to the PLACE OF BEGINNING, containing 1.97 acres of land, more or less.



Surveyed December 2000

By: *S. M. Kling*
S. M. Kling
R.P.L.S. No. 2003

10900-02b:duckhaven.drl

FIELD NOTES
3.000 ACRE TRACT

Being all that certain tract or parcel of land lying and being situated in the B.M. McGREGOR SURVEY, Abstract No. 170 in Brazos County, Texas and being part of the 188.04 acre tract described in the deed from Thousand Oaks Development Co., Joint Venture to Smiling Mallard Development, Ltd. as recorded in Volume 4011, Page 142 of the Official Records of Brazos County, Texas (O.R.B.C.) and being more particularly described by metes and bounds as follows:

BEGINNING: at a found 1/2-inch iron rod marking the north corner of said 188.04 acre tract, the northeast corner of the J.C. and Eugene Wade 1st tract described in Volume 159, Page 201 of the Brazos County Deed Records (B.C.D.R.), being in the southwest right-of-way line of Union Pacific Railroad (based on a 100' width), and said iron rod also being in or near the northwest line of said B.M McGREGOR SURVEY;

THENCE: S 53° 43' 41" E along the common line of said 188.04 acre tract and the Union Pacific right-of-way line for a distance of 302.67 feet to a 1/2-inch iron rod set for corner, from whence a found 1/2-inch iron rod marking the north corner of Drake Drive (based on a 90' width at this location recorded in Volume 4858, Page 144 (O.R.B.C.)) bears S 53° 43' 41" E at a distance of 217.46 feet for reference;

THENCE: S 36° 07' 50" W into the interior of the said 188.04 acre tract for a distance of 197.02 feet to a 1/2-inch iron rod set for corner;

THENCE: S 52° 32' 00" E continuing through the interior of the said 188.04 acre tract for a distance of 224.93 feet to a 1/2-inch iron rod set for corner, said iron rod being in the west right-of-way line of said Drake Drive (80' width at this location);

THENCE: 72.09 feet in a counter-clockwise direction along the arc of a curve in the beforesaid Drake Drive right-of-way, said curve having a central angle of 09° 23' 17", a radius of 440.00 feet, a tangent of 36.13 feet and a long chord bearing S 24° 58' 45" W at a distance of 72.01 feet to a 1/2-inch iron rod set for corner;

THENCE: N 52° 32' 00" W for a distance of 239.78 feet to a 1/2-inch iron rod set for corner;

THENCE: S 36° 05' 39" W for a distance of 82.94 feet to a 1/2-inch iron rod set for corner;

THENCE: N 53° 43' 41" W for a distance of 350.37 feet to a 1/2-inch iron rod set for corner, said iron rod being in the east line of the beforesaid 503.39 acre Wade 1st tract, and the northwest line of the said 188.04 acre tract;

THENCE: N 44° 01' 36" E for a distance of 353.50 feet to the POINT OF BEGINNING and containing 3.000 acres of land, more or less.

I, Kevin R. McClure, Registered Professional Land Surveyor No. 5650 in the State of Texas do certify that this survey substantially complies with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1B, Condition IV Land Title Survey.



Kevin R. McClure
Kevin R. McClure, R.P.L.S. #5650



4/24/06

Doc Bk Vol Pg
00938129 OR 7538 26

Filed for Record in:
BRAZOS COUNTY

On: Aug 21, 2006 at 04:10P

As a
Recording

Document Number: 00938129

Amount 31.00

Receipt Number - 297911

By,
Teresa Ramirez

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

BRAZOS COUNTY

as stamped hereon by me.

Aug 21, 2006

HONDRABLE KAREN MCDUEEN, COUNTY CLERK
BRAZOS COUNTY