

DRAKE'S LANDING II

Declaration of Conditions, Covenants and Restrictions

This declaration made the 22nd day of Oct., 2007, by the undersigned, hereafter called the Declarant, states:

WITNESS:

WHEREAS Declarant is the owner of real property known as Drake's Landing II, consisting of 15 parcels and recorded as Lots 1,2,3,4,5,6,7,8,9,10,11,12,13,14, and 15 Henderson County, Texas. The Declarant is desirous of subjecting this property to the conditions, covenants and restrictions set forth herein, all of which is intended for the benefit of the property and for each owner thereof. These conditions, covenants and restrictions shall run with the land and each parcel or lot contained therein and shall apply to and shall bind all successive owners of every parcel or lot.

NOW, THEREFORE, Declarant makes, declares and imposes the following limitations, covenants and restrictions upon such real property as restrictive and protective covenants, running with the land and binding upon all present and future owners of any part of such real property, and further declaring that each lot within the tract is and shall be held, transferred, conveyed and occupied subject to the restrictive and protective covenants hereinafter set forth.

ARTICLE I

REAL PROPERTY

The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this declaration in Henderson County, Texas, and is more particularly shown as Lots 1-15 on the recorded plat which has been recorded in the Henderson County Court House in Cabinet E, Slide 389, file #15429.

No other property, other than that described above, shall be subjected to this declaration, unless and until specifically made subject thereto.

Declarant retains the right to remove any portion of or any Parcel therein from these stated Declaration of Conditions, Covenants and Restrictions. The Declarant without consent of the owners thereof may make changes to these covenants as long as the Declarant owns 6 or more parcels at the time said change(s) are recorded.

ARTICLE II

PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

Section 1. General Purposes:

The foregoing described real property is subject to the following set of restrictions, covenants and conditions to insure the best use, appropriate development, and improvements of each lot and building site; and, further, to protect the owners of building sites against improper use of surrounding building sites as will deprecate, depreciate or otherwise adversely affect the value of their property; to preserve the natural beauty of said property; and, in general, to provide the quality of improvements within the described property and surrounding properties and thereby enhance the value of improvements made by the purchasers of the parcels, lots and building sites:

Section 2. Utilities:

1. All electrical, telephone, or other utilities shall be installed underground from the service line to the dwelling unit. Each individual landowner may choose where said lines transgress within their property boundaries so long as approval is first had and obtained from each individual utility company. Solar roof panels shall be allowed, but shall not be allowed to be maintained at a height more than three (3) feet above the highest roof line of the residence or garage to which they are attached. No evaporative cooler shall be placed on any roof. Television antennas and 36" or smaller satellite dishes shall be allowed.

2. All individual water and/or sewage systems shall be designed, installed and maintained at all times in compliance with rules, regulations, and standards established by the governing authority.

Section 3. Residential Development:

- A. Lots 1 thru 15 shall be considered "residential lots."
- B. Lot 12 may be changed to a commercial lot at Declarant's sole discretion.
- C. No structure shall be located closer than five (5) feet away from any property line.
- D. All lots shall be restricted to one home and one outbuilding.
- E. The dimensions of said single-family residence shall be a minimum of 1200 square feet of heated and cooled area for a ranch-style home, and a minimum of 1500 square feet for a two-story home, exclusive of garage, storage areas, and basements, unless approved by Declarant.
- F. No structure of a temporary character, such as a basement, shack, garage, barn, mobile home or other outbuilding, shall be erected at any time to be used as a residence. No structures shall be built for the purpose of sheltering commercial trucks or heavy equipment, including construction equipment. It shall be a violation of this

provision for a camp trailer, motor home or recreational vehicle to be parked on the property for hunting, fishing, boating or other recreational purposes, unless said equipment is inside a structure that is of the same architectural style and materials as the main residence. No more than two (2) such vehicles may be on the property at one time. No mobile home mounted or constructed on a foundation shall be used on the property at any time as a residence, either temporarily or permanently.

- G. No structure shall be allowed to remain unfinished or unpainted for more than nine (9) months from the commencement date of the construction.

Section 4. Architectural Control:

1. All construction must first be approved in writing by the Declarant or his assignee. Declarant has sole authority on Architectural guidelines, and all buildings, fences, and permanent structures must be approved in writing or can be removed as a violation of these covenants.

2. All structures must have architectural appeal in appearance. The following conditions apply, unless the Declarant has given written approval to the contrary.

- a. The roofline must consist of a minimum of 8 pitches with at least 4 pitches that exceed 3 inches of rise per each 12 inches of roof area.
- b. The home must have offsets so the home does not appear to be a simple rectangle or square in shape.
- c. The home must have a minimum of 50% stone relief on the front and rear of the home.
- d. The home can use brick and stucco relief if used so the minimum stone relief is no less than 30% in the front and rear and the combined stucco, brick and stone relief comprise more than 60% of the front and rear of the home.
- e. The home, garage, dock and outbuildings must be of a natural, earth-tone color.
- f. The home, garage, dock and outbuildings must be built with new materials.
- g. Prefabricated homes will not be allowed unless modified to meet these guidelines.
- h. Outbuildings will be built with similar exterior materials, including the same stone, brick or stucco relief percentages as outlined above. Outbuildings must be approved by the Declarant prior to being erected.
- i. All exterior surfaces of all structures shall appear to be of a wood material, stone, brick or stucco. The Declarant will consider other materials that give the same look on an individual basis.
- j. Large blank walls shall have some architectural relief through the use of windows, offsets, shutters, stone, brick, stucco or other approved design characteristics.
- k. Exposed cinderblock walls are not allowed unless said cinderblocks are designed to look like stone.
- l. Eaves of roofs must extend a minimum of 30" from the outside walls.
- m. Any fences must receive the Declarant's approval prior to erection.

3. Architectural appeal can be obtained by adding roof pitches, extending eaves, adding porches, offsetting exterior walls, adding brick or stone accents, windows, and other similar details. Please contact the Declarant for additional information and submit renderings as may be required to obtain the Declarant's written approval.

Section 4. Land use:

1. No outside toilet facilities, portable or otherwise, shall be maintained on the property, except as temporary facilities in connection with construction activity. Any sewage disposal systems shall be of a type approved by the County and/or State Department of Health and shall be maintained by the Owner at all times in proper sanitary condition and in accordance with applicable state, county and city laws.

2. No junk (including non-operable motor vehicles or parts thereof), trash, debris or other forms of solid waste shall be allowed to accumulate on any lot or parcel but shall be promptly and officially disposed of. No vehicles which are not in serviceable or usable condition or which are inoperable or unlicensed shall be parked on any lot or street, nor permitted to remain therein. All rubbish, trash, garbage and other putrefied forms of waste shall be kept in sanitary containers equipped with tight fitting lids. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

3. No commercial activities may be conducted on any lot. No part of the Property or any improvement situated thereon shall be put to any industrial, manufacturing or other use which may be offensive by reason of odor, fumes, dust, smoke, noise, vibration, or pollution including, but not limited to, factories, tanneries, truck stops, or which are hazardous by reason of the excessive danger of fire or explosion.

4. Each lot owner may have no more than five (5) domestic animals on the property at any time. The owner of said lot shall be responsible for the proper feeding and care of any animals and be fully responsible for their care and control. No animal shall be allowed to roam free onto another lot owner's property. Any and all nuisances caused by said animal shall be the responsibility of the owner/feeder of said animal. Any continued nuisance shall be cause for the removal of said animal from Drake's Landing II. Dogs shall be controlled by electric collars or approved fencing to assure that they do not roam. Excessive barking by dogs shall be controlled by other such devices or surgery to minimize the loudness of their bark.

5. No part of the Property or any improvements situated thereon shall be used as a theater, club or store which encourages or sells films, services or wares of a pornographic nature.

6. Each family residence shall be built to conform to the general aesthetics of the area. Each owner is asked to remove minimal amounts of vegetation for residential development so that the natural beauty remains intact as much as possible. All structures and improvements are to be kept and maintained in a good and sightly condition.

7. No billboards or advertising signs on a commercial basis (except for "For Sale" signs and signs identifying the subdivision located near the exterior boundary of the subdivision) shall be erected, placed, maintained or permitted on any lot.

8. All provisions of the Henderson County, City of Berryville and other recorded documents in reference to these parcels shall apply, with the most restrictive provision applying to all of Drake's Landing II. It is the intent of the Declarant that this subdivision remain a legal residential subdivision, as filed with Henderson County, and that any changes to and maintenance of the accepted private drive shall be the responsibility of the owners of Lots 4,5,6,7,8,9,10,11 and 12.

9. The discharge of firearms is prohibited within Drake's Landing II. No firearms shall be used to threaten the safety of any other owner or the animals they may possess.

10. Household garbage will be stored within a closed building (i.e. house, approved outbuilding or garage).

11. Appliances such as refrigerators, freezers, washers and dryers shall not be kept outside, unless fully screened from view from all directions. Outdoor maintenance equipment must also be stored and fully screened from view from all directions.

Section 5. Hazardous Substances:

The property shall not be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. Notwithstanding the foregoing, no hazardous substance shall be brought unto, installed, used, stored, treated, disposed of or transported over the Property, and all activities on the Property shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as hazardous or "toxic" under the regulations implementing The Comprehensive Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., The Clean Air Act, 42 U.S.C. 7401 et seq., the Comprehensive Environmental Cleanup and Responsibility Act 75-10-701, M.C.A., and any other local, state, and/or federal laws that govern the existence, cleanup and/or remedy of contamination of property, the protection of the environment from spill deposited or otherwise in place, contamination, the control of hazardous waste or the use, general transport, treatment, removal or recovery of hazardous substances including building materials.

Section 7. Landscaping & Noxious Weed Control Measures:

All owners shall be responsible for controlling noxious weed as is determined by the Agricultural Guidelines of the governing authority. Topsoil will be replaced on all disturbed areas. Upon completion of the grading and construction the property shall be landscaped to control erosion and to enhance the value of the property by meeting the standards of a professional landscaper.

Section 8. Duration and Amendment:

These restrictions, covenants, reservations, and conditions are to run with the land and shall be binding on all parties owning property within Drake's Landing II, and shall be in effect for a period of forty (40) years, after which period shall be automatically extended for successive periods of ten (10) years unless a written instrument signed by eighty-five percent (85%), of the then current owners of lots in Drake's Landing II has been recorded to amend this declaration or any parts thereof. Declarant may amend these restrictions, covenants, reservations and conditions at any time prior to the purchase and conveyance of seven (7) lots in Drake's Landing II to parties other than the Declarant.

Section 9. Enforcement:

The conditions, restrictions and covenants herein contained shall bind and inure to the benefit of, and be enforceable by the Parties, their successors, personal representatives and assigns, or by the owner or owners of any parcel of the above described property. The failure of the Parties, their successors or assigns to enforce any of the conditions, restrictions or covenants herein contained shall be in no way deemed a waiver of rights to enforce such conditions, restrictions or covenants hereafter. Nothing herein contained shall be construed as preventing the application of any remedy given by law against a nuisance, public or private. The remedy herein provided shall be in addition to any other remedy now or hereafter provided by law.

Section 10. Severability:

Invalidation of any one condition, restriction or covenant herein contained by judgment or order of any court of competent jurisdiction, shall in no way effect the validity of remaining conditions, restrictions or covenants; and said remaining conditions, restrictions and covenants shall continue and remain in full force and effect.

Section 11. Community Road Agreement/Easements and Association:

The Community Road Agreement and Easements shall become an integral part of these Conditions, Covenants and Restrictions. The Declarant or owners may create an annual community fee for the maintenance of the roads and other community property. If this fee is created all parcel owners along said roadway or benefit from the community property shall pay for such fee(s) when due. The Drake's Landing II Property Owners Association shall be created by the Declarant and shall affect Lots 4,5,6,7,8,9,10,11 and 12. The Declarant shall record the Association Documents and they shall become an integral part of the Declaration Covenants and Restriction of Drake's Landing II.

Section 12. Shared Boat Dock Agreement and Easements:

The Declarant is not authorized to give permission for any shared dock arrangement among owners. Should owners want to pursue a shared dock arrangement, the owners must receive permission from the Neches River Authority.

Section 13. Neches River Authority:

The lots along the water shall enter into a lease agreement with Neches River Authority for the use of the land between the property boundaries and extending to the water's edge. All prospective purchasers are recommended to meet with the Neches River Authority prior to purchase. There is no setback requirement or easements along the Neches River Authority land.

Section 14. Boat Docks, Boat Houses and Piers:

All boat docks/houses shall comply with the rules of the Neches River Authority and further be approved by the Declarant prior to being erected. No boat dock shall unduly restrict access to the lake from any other lot owner on the lake. No boat dock, boat house or pier shall extend more than 30 feet from water's edge (the 345-foot mean sea level elevation /spillway elevation of lake) as shown on the recorded plat for Drake's Landing II. No boat dock, boat house or pier shall be allowed to have unsightly items placed, or stored on the boat dock, boat house or pier unless properly enclosed and out of sight from all directions. This includes, but is not limited to, water pumps, plumbing lines, boating and fishing gear, trash containers, etc. All boat docks, boat houses and piers must be maintained in good condition and must be architecturally approved by the Declarant. The Declarant has authority on placement, size, and architectural design so that no boat dock, boat house or pier impedes the benefit of the other lot owners to see and use the lake. All boat docks, boat houses and piers must enhance the value of all the properties therein. Boat docks, boat houses and piers shall be built of new materials and shall exclude shiny surfaces such as galvanized steel or other unsightly items as determined by the Declarant. No metal barrels shall be used for flotation. No creosote-treated material shall be used for any seawall or boat dock; only long lasting floating material that is attractive may be used for floating docks.

Section 15. Dredging and Retaining Walls:

Only approved materials may be used for retaining walls or bulkheads or seawalls. Such materials include concrete, cement, a minimum of 8-gauge steel sheet pilings, PVC sheet pilings, pressure treated lumber, and rip rap. Creosote materials will not be approved. All construction activities, including landscaping, home construction, boat docks, seawalls, etc. shall incorporate erosion-control measures to minimize the erosion into the lake. The above activities must receive the Declarant's approval prior to construction.

Section 16. Waste Water Easements:

Each lot owner must establish an acceptable waste water system designed and approved by a registered engineer, and any other governing entity. Neches River Authority must approve said waste water system design prior to construction of any structure. All waste must be distributed and controlled on the owner's lot(s) according to approved systems as defined by the governing authorities. Failure to maintain said system will result in a fine of three (3) times the cost of maintaining said system. The fine will be paid to the party

who undertakes the responsibility of maintaining said system. The owner of the defaulting party shall pay this fine promptly, or the party taking responsibility may place a lien on the defaulting party's property. Any waste that may be distributed onto another's owners lot shall require the parties to reach an agreement as to the value of the waste distribution and enter into a binding and perpetual agreement of how said compensation is to be paid.

Section 17. Resubdivision:

Except as it applies to the Developer/Declarant, no tract shall be resubdivided or split. The restrictions, however, specifically allow the Declarant/Developer to divide, subdivide, realign and resubdivide any unsold and platted tract in the Development as it deems necessary in its sole discretion. A lot or Tract may be combined with two or more adjoining lots or tracts to form larger a larger resulting Tract.

Section 18. Driveways:

All driveways from the road to the garage shall be surfaced with concrete, concrete pavers and/or asphalt. Driveways must be surfaced within 12 months of the completion of the residential dwelling.

Section 19. Timber, Landscaping, Mowing and Burning:

All lot owners shall maintain their lots in good condition, which includes the removal of dead timber and or limbs. All lot owners shall keep all weeds under control as to not become unsightly. Weeds that have grown more than 1 foot from the ground shall be removed or mowed. Owners shall keep all shrubs, trees, grass and plantings of every kind cultivated, pruned, mowed and free of trash and other unsightly materials. Any rubbish/burn pile(s) must be removed or burned within 2 days of its creation or the first day thereafter that weather permits.

Section 20. Notice:

In the event of the failure of the Owner to comply with the above requirements after ten (10) days written notice thereof, the Declarant or its designated assignee(s) may, without liability to the Declarant and/or assignee(s), trespass or otherwise enter upon (and/or authorize one or more others to enter upon) said Tract, and do anything necessary to secure compliance with this Declaration. The owner of said lot or tract shall be responsible for any costs associated therein. Payment for any related charges shall be payable on the 1st day of the next calendar month.

Section 21. Easements:

Developer/Declarant reserves an Access/Maintenance/Utility Easement, five (5) feet in width along the side lot lines and ten (10) feet along the front property lines of each lot/tract. This easement shall be used by public utility service providers the

Drake's Landing II Declarations, Conditions, Covenants and Restrictions

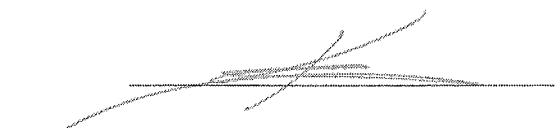
Developer/Declarant, and/or its assigns, as may be required. No easement is reserved on the waterfront lots between the lot(s) and Neches River Authority Land.

IN WITNESS WHEREOF, the Declarant has executed this instrument the day and year herein above written.

Executed on October 29, 2007.

VOL
2817

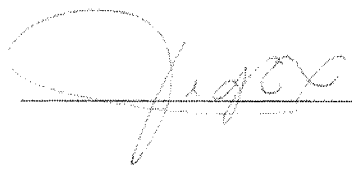
PAGE
245

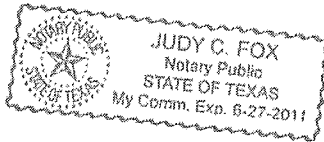

Kirk B. Drake, Declarant

State of Texas

County of SMITH

This instrument was acknowledged before me on October 29 ²⁰⁰⁷, by Kirk B. Drake.


Notary Public, State of Texas



After recording return to:

Kirk B. Drake
23184 Edgewater Drive
Frankston, TX 75763

FILED FOR RECORD

2007 OCT 31 PM 4:25

CLERK OF COUNTY CLERK
HENDERSON COUNTY, TEXAS