

## EXHIBIT D

### DECLARATION OF RESTRICTIVE COVENANTS, EASEMENTS AND CONDITIONS

THIS DECLARATION OF RESTRICTIVE COVENANTS, EASEMENTS AND CONDITIONS (this "**Declaration**") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by BRAZOS RIVER AUTHORITY, a River Authority of the State of Texas ("**Declarant**").

### **RECITALS**

WHEREAS, Declarant is the owner of the Authority Land (as defined below);

WHEREAS, the 81<sup>st</sup> Texas Legislature enacted House Bill No. 3031 ("**HB 3031**") which requires that certain restrictions, including but not limited to those contained in this Declaration be placed on such portions of the Authority Land that are intended to be sold to a third party or third parties prior to such sale or sales taking place; and

WHEREAS, due to the proximity of the Retained Land (as defined below) to the Property (as defined below), Declarant has a vested interest in the development, use and/or sale of all or some of the Authority Land; therefore Declarant desires to subject the Property (as defined below) to the covenants, conditions and restrictions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby agrees as follows:

#### Article I. **DEFINITIONS.**

When used in this Declaration, the following words shall have the following meanings:

- (a) **"Authority Land"**: That certain real property in the immediate vicinity of the Lake, located in one or more of Palo Pinto, Stephens, Young, and Jack Counties, in the State of Texas owned by Declarant as of the date hereof, including without limitation, the Property and the Retained Land, as more particularly described on Exhibit "A" attached hereto and made a part hereof, plus any additional land added thereto in accordance with the procedures set forth in this Declaration. Declarant reserves the right to obtain a survey and metes and bounds description of the Authority Land and replace Exhibit "A" attached hereto with such revised description.
- (b) **"Commercial Leased Land"**: Those certain parcels of land consisting of approximately 50 acres located wholly outside the FERC Project Area which are subject to a commercial lease, including a commercial lease where such Ground Lessee (as defined below) is authorized to sublease for residential purposes, as generally depicted on Exhibit "B" attached hereto, as of the date hereof. The Commercial Leased Land does not include that portion of the Authority Land which is subject to a commercial lease where

the leased premises are located wholly or partially within the FERC Project Area, including any portion of the FERC Buffer.

- (c) **“Declarant”**: Brazos River Authority, a River Authority of the State of Texas, created pursuant to Article XVI, Section 59 of the Texas Constitution, and those successors or assigns to whom it transfers of record some or all of its rights as Declarant. Declarant’s current address is 4600 Cobbs Drive, PO Box 7555, Waco, Texas, 76714-7555.
- (d) **“Driveways”**: Those certain gravel and/or paved driveways which connect a Road or other street or thoroughfare to an individual leased lot or any improvements thereon; Driveways include those shared or common driveways which serve more than one individual leased lot which is part of the Leased Tract, and which driveways serve more than one Owner or Ground Lessee.
- (e) **“Environmental Laws”**: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting the environment or Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.
- (f) **“FERC Buffer”**: A buffer strip that is 25 or 50 feet in width (depending on the location) and is measured landward horizontally from the 1000’ contour line, as such 1000’ contour line and the FERC Buffer may move and shift from time to time due to natural forces, such as erosion and accretion. All or a portion of the FERC Buffer, which consists of approximately 300 acres of land, is covered by the residential Ground Leases, and may or may not be included in the Residential Leased Land.
- (g) **“FERC License”**: The order of the Federal Energy Regulatory Commission issuing a license to Brazos River Authority for project number 1490-003-Texas on September 8, 1989, as such license has been renewed, extended, or amended and may be further renewed, extended, or amended at any time and from time to time, and also including the Amendment to the original FERC license which amendment was issued on May 15, 1980, to the extent incorporated or referenced in the FERC License.
- (h) **“FERC Project Area”**: That portion of the Authority Land which is subject to the FERC License, as further identified and defined in the FERC License, as may be amended at any time and from time to time, and which FERC Project Area may move or change over time due to natural forces.
- (i) **“Green Acres”**: That certain subdivision of record in Palo Pinto County, Texas according to the map or plat of record in Vol. 5, Page 17 of the Plat Records of Palo Pinto County, Texas, as it may be amended or modified from time to time.

- (j) **"Green Acres Declarations":** That certain Green Acres Subdivision Declaration of Covenants, Conditions and Restrictions dated March 26, 1979, as recorded with the plat in Vol. 5, Page 17 of the Plat Records of Palo Pinto County, Texas.
- (k) **"Green Acres Lease":** That certain Cottage Site Lease Agreement by and between Declarant, as lessor, and Jane Nail, as lessee, dated February 9, 1979 for those certain individual leased lots more particularly described in said Lease.
- (l) **"Ground Lease":** Each of those certain residential and/or commercial ground leases, use and/or occupancy agreements between the Declarant and/or the Owner of any portion of the Property and a Ground Lessee, as the same may be amended, which leases and/or agreements encompass all or any portion of the Property (including, where applicable, the lessees under those leases defined in the Ranch Agreement).
- (m) **"Ground Lessee":** A person who leases all or any portion of the Property from the Declarant and/or the Owner of such Property; including the successors and assigns of the Ground Lessee.
- (n) **"Hazardous Materials":** Underground storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.
- (o) **"Lake":** Possum Kingdom Lake located in Young, Palo Pinto, Stephens, and Jack Counties. The boundary of the Lake is defined by the 1000' contour line, as that contour may meander and change over time with natural forces, including erosion and accretion. The "1000' contour line" means the line running along the periphery of the Lake if the surface of the Lake is at an elevation of 1000 feet above mean sea level, as measured from the top of the spillway crest gates of the Morris Sheppard Dam, as such line may move and shift from time to time due to natural forces.
- (p) **"Leased Tract":** Collectively shall mean the Commercial Leased Land and the Residential Leased Land.
- (q) **"Lienholder":** Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any portion of the Property. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to any portion of the Property by foreclosure, trustee's sale or otherwise.
- (r) **"Owner":** The record holder of fee simple title to any portion of the Authority Land (including its heirs, personal representatives, successors and assigns).
- (s) **"person":** Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

- (t) **"Property":** The Residential Leased Land, Commercial Leased Land, Roads, and Undeveloped Strips, or any portion thereof (as applicable), whether owned by Declarant or an Owner and whether or not subject to a Ground Lease or other lease or owned in fee simple, as more particularly described and/or depicted in Exhibit "C" attached hereto and made a part hereof. Declarant reserves the right to obtain a survey and metes and bounds description of the Property and replace Exhibit "C" attached hereto with such revised description.
- (u) **"Ranch":** That certain subdivision of record in Palo Pinto County, Texas according to the map or plat of record in Volume 7, Page 71, Plat Records of Palo Pinto County, Texas, as it may be amended or modified from time to time, which subdivision includes a portion of the Property and a portion of the Retained Land.
- (v) **"Ranch Agreement":** That certain Agreement by and among the Declarant, The Ranch on Possum Kingdom, L.P., and Hill Country Harbor Village, L.P. effective as of August 1, 1997 and dated December 12, 1997 which affects a portion of the Property and a portion of the Retained Land.
- (w) **"Ranch Declarations":** That certain Declaration of Covenants, Conditions and Restrictions for The Ranch on Possum Kingdom Palo Pinto County, Texas dated December 8, 1997, as recorded in Vol. 944, Page 403 of the Official Public Records of Palo Pinto County, Texas, which Ranch Declarations affect a portion of the Property and a portion of the Retained Land.
- (x) **"Residential Leased Land":** Those certain parcels of land consisting of approximately 900 acres located wholly outside the FERC Project Area which are subject to a single-family residential lease, as generally depicted on Exhibit "D" attached hereto, as of the date hereof. The Residential Leased Land does not include the FERC Buffer or any part of the FERC Project Area; provided, however, if the FERC Buffer is removed from the FERC Project Area or no longer subject to regulation by FERC (which shall be evidenced by an amendment to this Declaration), then the Residential Leased Land shall include that portion of the FERC Buffer so removed from regulation by FERC. The Residential Leased Land shall not include that portion of the Authority Land which is subject to a residential lease where the leased premises are located wholly within the FERC Project Area but outside the FERC Buffer.
- (y) **"Restrictions":** The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.
- (z) **"Retained Land":** The FERC Project Area and all the other real property owned by Declarant at the Lake as of the date of this Declaration, as more particularly described on Exhibit "E" attached hereto, save and except the Property.
- (aa) **"Roads":** Those certain approximately 49 miles of gravel and/or paved streets, roads, and thoroughfares owned and maintained by the Declarant as of the date of this Declaration which provide access, ingress, and egress to and from the Property, the Lake,

and/or the Retained Land as generally depicted and/or described on Exhibit "F" attached hereto. The Roads referred to herein exclude (i) Driveways, (ii) paved or gravel roads located wholly within any of Declarant's public use and recreation areas and certain roads serving Declarant's facilities, (iii) paved or gravel roads located within Declarant's gated operations areas as of the date of this Declaration, and (iv) paved or gravel roads located wholly within an individual leased lot that is part of the Commercial Leased Land and that only serves that specific portion of the Commercial Leased Land.

(bb) **"Shoreline Management Plan":** That certain "Possum Kingdom Shoreline Management Plan and Customer Guide," adopted May 22, 2006 and amended July 31, 2006, and as may be revised and/or further amended by Declarant at any time and from time to time.

(cc) **"Undeveloped Strips":** Those certain strips of undeveloped and un-leased land located (i) between individual leased lots within the Leased Tract (i.e., a strip of land which is not covered by the individual Ground Leases on either side of such strip of land), (ii) between the Leased Tract and the Roads or (iii) other strips of land indentified by Declarant, all of which are more particularly described on Exhibit "G" attached hereto.

## Article II. **APPLICABILITY AND EASEMENTS.**

Section 2.01 **Applicability.** This Declaration and the Restrictions set forth herein shall apply to and burden the Property and Owners and Ground Lessees thereof; and shall benefit Declarant and the Owners of any portion of the Authority Land. It is not intended to burden any other portion of the Authority Land, including the Retained Land.

Section 2.02 **FERC Project Area.** Subject to Section 4.01(b) below, no Owner or Ground Lessee may forbid, restrict, or take any action which effectively forbids or restricts, the public from using the FERC Project Area and the adjacent areas of the Lake in accordance with the terms of the FERC License.

Section 2.03 **Access.**

(a) Roads. Each Owner and Ground Lessee shall agree to not block, restrict, or otherwise prohibit access over, through or across any Road and further agrees that such Roads or portion thereof shall remain open for use by Declarant, other Owners, lessees of any portion of the Authority Land (including Ground Lessees) and the general public. Except for (i) those portions of the Authority Land which are accessible by water only as of the date hereof, and/or (ii) restrictions of access existing as of the date hereof (e.g., access to and from public roads that requires traversing real property not owned by Declarant or Owners hereunder), and/or (iii) the covenants and restrictions of the Ranch Declarations, Green Acres Declarations, or other restrictive covenants existing prior to the date hereof, (to the extent applicable to the Roads), no Owner or Ground Lessee shall be permitted to block, restrict, or otherwise prohibit access on, over, or across such Roads. At such time as the Roads or any portion thereof are conveyed or dedicated to the county in which such portion of the Roads is located, whether pursuant to HB

3031 or otherwise, such Roads so conveyed to the applicable county shall no longer be considered part of the Roads or Property described herein for so long as such Roads are owned and maintained by the applicable county as public roads.

(b) Driveways. The Driveways are not part of the Roads and shall be maintained by the Owner or Ground Lessee of the applicable Driveway. No Owner or Ground Lessee shall obstruct, prevent, or otherwise restrict access on, over or across any portion of a common Driveway by any such other Owner or Ground Lessee, or their guests or invitees, whose portion of the Authority Land is served by such common Driveway. Owners and/or Ground Lessees whose portion of the Authority Land is served by a common Driveway shall at all times have a non-exclusive right of ingress and egress over and across such common Driveway to access their portion of the Authority Land.

**Section 2.04 Reserved Easements.** All grants and dedications of easements, rights-of-way, restrictions, and related rights affecting the Property, made prior to the Property becoming subject to this Declaration, and which are of record, or visible or apparent, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. The foregoing adoption of such easements includes, without limitation, any and all written easements or agreements, whether or not recorded, between the Authority and any other party for the installation, maintenance, repair or replacement of utility lines located on, above, over, under, or beneath the Authority Land.

**Section 2.05 Intentionally Deleted.**

**Section 2.06 Easements for Lake Maintenance.** Upon conveyance of all or a portion of the Authority Land, Declarant will reserve for itself and its successors, assigns, and designees the non-exclusive right and easement, but not the obligation, to enter upon the Authority Land, the Lake and other bodies of water, if any, located within the Authority Land (a) to install, keep, maintain and replace pumps in order to obtain water for the irrigation of any portion of the Retained Land, (b) to construct, maintain, replace, and repair any wall, dam, or other structure retaining water therein, (c) to access, construct, maintain, replace, and repair any measurement stations, monuments, or other similar improvements, (d) to remove trash and other debris, and (e) to fulfill Declarant's obligations as a river authority and any obligations set forth in the FERC License, state water rights, or other governmental regulations. Declarant and its designees shall also reserve an access easement through, over and across any of the Property to the extent reasonably necessary to exercise their rights and responsibilities under this section; provided however, that (i) Declarant shall provide written notice at least 48 hours in advance of such entry to the Owner of such portion of the Property (except in the event of an emergency in which case advance notice shall not be required, but Declarant shall provide such written notice as soon as practicable thereafter), (ii) Declarant shall promptly repair any damage to the Property caused by Declarant's

entrance onto such Owner's portion of the Property; and (iii) Declarant shall use reasonable efforts to avoid interfering with the Owner's use of such Owner's portion of the Property.

**Section 2.07 Flowage Easement.** Upon conveyance of all or a portion of the Authority Land, Declarant will reserve for itself and its successors, assigns, and designees a perpetual right, power, privilege, and easement to occasionally overflow, flood, and submerge that portion of the Authority Land located at or below the elevation contour of 1015' above mean sea level in connection with Declarant's operation and maintenance of the Lake. Declarant shall have no liability to any Owner, Ground Lessee, or any other person for any damages, claims, costs, injuries, or liabilities to any person or property or the Authority Land or any improvements thereon which are caused by or arise from any act or omission by Declarant in connection with the foregoing right and easement.

Article III. **ADDITIONS, MODIFICATIONS, AND TERMINATION OF THE DECLARATIONS**

**Section 3.01 Addition of Land.** Additional land may be included in the Authority Land or Property (or any portion thereof) at any time by Declarant, as long as Declarant owns any portion of the Authority Land, by recording an Amendment to this Declaration in each of the counties in which the Authority Land is located. Upon such additions, this Declaration and the Restrictions and obligations set forth herein shall apply to the added land and the rights, privileges, duties, and liabilities of the Owners subject to this Declaration shall be the same with respect to the added land as with respect to the Authority Land originally covered by this Declaration. As additional lands are added hereto, Declarant shall, with respect to said land, record Amendments which may incorporate this Declaration therein by reference and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those added lands.

**Section 3.02 Intentionally Deleted**

**Section 3.03 Modification and Termination.** This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of (i) the Owners of at least sixty percent (60%) of the individual lots which comprise the Residential Leased Land and Commercial Leased Land, and (ii) the Owners of at least sixty percent (60%) of the land area of the Retained Land; and (iii) Declarant, for so long as Declarant has any interest in the Authority Land, whether as an Owner or holder of the FERC License or otherwise. Notwithstanding the foregoing, Declarant, without the joinder of any other party, shall have the absolute right to make minor changes or amendments to this Declaration to correct or clarify errors, omissions, mistakes or ambiguities contained herein. No amendment shall be effective until such amendment has been

recorded in the Official Public Records of each of the counties in which the Authority Land is located.

Article IV. **RESTRICTIONS.**

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

Section 4.01 **Improvements.**

- (a) **Setbacks.** No improvements (except as specifically set forth in subsection (c) below) shall be constructed or located on the Property within twenty-five feet (25') landward measured horizontally from the 1000' contour line of the Lake, a meander line that changes over time due to natural forces, such as erosion and accretion; provided, however, in accordance with HB 3031, Declarant intends to seek approval by the Federal Energy Regulatory Commission of improvements inside this setback that are existing at the time this Declaration is filed of record and which have been approved in writing by Declarant. In addition, no improvements on the Property (or any portion thereof) shall be constructed or located within five feet (5') of any other boundary line (i.e., the side and back boundary lines), other than fences; provided, however, this restriction shall not include improvements located within this 5' setback that are existing as of the date hereof and which have been approved in writing by Declarant.
- (b) **No Fencing in FERC Project Area.** No Owner or Ground Lessee shall have any rights to construct any improvements or fencing which block or restrict access to the FERC Project Area, except with the written consent of Declarant, to be granted or withheld in its sole discretion, and except in compliance with the FERC License. This limitation does not apply to fences located within the Property and outside the FERC Project Area.
- (c) **Erosion Control.** Erosion control improvements (such as retaining walls, rip rap, etc.) and landscape planting may not be constructed or located within the FERC Project Area or at or below the 1000' contour line without the prior written approval of the Declarant. Such improvements shall be subject to the terms and conditions set forth herein, in the FERC License, in any other Federal Energy Regulatory Commission rules and regulations, and in the Declarant's regulations, including without limitation, the Shoreline Management Plan.
- (d) **Signs.** No Owner or Ground Lessee shall have the right to place, or permit to be placed, any advertisements, private notices, signs, or billboards on the Property except that temporary signage customarily found on residential property may be placed on the Residential Leased Land at the reasonable discretion of the Owner and/or Ground Lessee of that portion of the Residential Leased Land.

Section 4.02 **General Restrictions.**



- (a) Hazardous Activities. No activities shall be conducted on the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any person or property.
- (b) Hazardous Materials. No Owner, Ground Lessee, or occupant of any portion of the Property shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under the Property except for such quantities which are routinely utilized in connection with residential use (for all portions of the Property except the Commercial Leased Land) or for commercial uses which are in compliance with this Declaration (for the Commercial Leased Land), and which are stored, used, and disposed of in compliance with all Environmental Laws. Each Owner and Ground Lessee shall indemnify, defend, protect and save Declarant, its successors and assigns, trustees, directors, employees and officers and each other Owner and Ground Lessee (collectively, the "Indemnified Parties"), harmless from and against, and shall reimburse such Indemnified Parties for, all liabilities, obligations, losses, claims, damages, fines, penalties, costs, charges, judgments and expenses, including, without limitation, reasonable attorneys' fees and expenses which may be imposed upon or incurred or paid by or asserted against such Indemnified Parties by reason of or in connection with such Owner's or Ground Lessee's failure to comply with this Subsection 4.02(b).
- (c) Nuisances. No Owner shall conduct, or permit to be conducted, any activity on the Property which is improper, immoral, noxious, annoying, creates a nuisance or is otherwise objectionable to other Owners or incompatible with the recreational use of the Lake and the FERC Project Area.

#### Section 4.03 **Use Restrictions.**

- (a) Uses on Residential Leased Land. The Residential Leased Land (and any Undeveloped Strips which are conveyed to an Owner as part of the Residential Leased Land) shall be improved and used solely for single-family residential use, inclusive of a garage, fencing and other such related improvements as are necessary or customarily incident to normal residential use and enjoyment and for no other use. No portion of the Residential Leased Land (and any Undeveloped Strips which are conveyed to an Owner as part of the Residential Leased Land) shall be used for manufacturing, industrial, business, commercial, institutional or other nonresidential purpose, save and except as set forth in Section 4.03(b) below. Notwithstanding the foregoing, Owners and/or Ground Lessees shall be permitted to conduct a "garage sale" on their respective portion of the Residential Leased Land (and any Undeveloped Strips which are conveyed to an Owner as part of the Residential Leased Land) not more than one time per calendar year.
- (b) Commercial Activities on Residential Leased Land. No professional, business, or commercial activity to which the general public is invited shall be conducted on the Residential Leased Land (and any Undeveloped Strips which are conveyed to an Owner as part of the Residential Leased Land); except an Owner, Ground Lessee, or

occupant of a residence thereon may conduct business activities within such residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements; (c) the business activity does not involve door-to-door solicitation of residents, lessees (including Ground Lessees) or Owners within the Authority Land; (d) the business does not generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Authority Land which is noticeably greater than that which is typical of residences in which no business activity is being conducted; and (e) the business activity is consistent with the residential character of the Residential Leased Land and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, lessees, Ground Lessees, or Owners of the Authority Land. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant.

- (c) Uses on Commercial Leased Land. Except as may be otherwise provided herein, Commercial Leased Land (and any Undeveloped Strips which are conveyed to an Owner as part of the Commercial Leased Land) may be improved and used for any lawful commercial purpose, including without limitation, non-profit organizations or governmental or quasi-governmental agencies.
- (d) Undeveloped Strips Not Part of Leased Land. Any Undeveloped Strips which are part of the Property, but are not conveyed to an Owner as part of the Residential Leased Land and/or the Commercial Leased Land or which are not conveyed as part of the Roads, shall remain undeveloped unless otherwise approved in writing by Declarant.
- (e) Wind Farms. No portion of the Property may be used for the commercial testing or development of wind power, or to produce, lease, store, and/or transmit electrical power generated thereby for commercial or resale purposes.

Article V. **MAINTENANCE AND SERVICES.**

Section 5.01 **Maintenance.** Each Owner shall keep, or cause to be kept, all improvements located on its respective portion of the Property maintained in good condition and repair, clean and free of rubbish and other hazards, and otherwise in full accordance with this Declaration and all governmental rules, regulations, codes, and zoning requirements. Such maintenance shall include, but not be limited to, the following: regular and timely removal of all litter, garbage, trash and

waste; regular lawn mowing; tree, shrub and plant pruning and trimming; watering of landscaped areas; weed control; pest control; maintaining exterior lighting and mechanical facilities in good working order; keeping walks and driveways clean and in good repair; and the repairing and repainting of the exterior improvements visible to neighboring properties and/or public view.

**Section 5.02 Casualty.** In the event of any damage to or destruction of any building or improvement on any portion of the Property from any cause whatsoever, the Owner or Ground Lessee upon whose portion of the Property the casualty occurred shall, at its sole option, either (i) repair, restore, or rebuild and complete the same with reasonable diligence, (ii) clear the affected area of all hazardous or dangerous debris and structures and lawfully dispose of same within one year from the date of casualty, or (iii) effectuate any combination of subsections (i) and (ii) of this Section 5.02 as such Owner or Ground Lessee may deem reasonably appropriate. Notwithstanding the foregoing, in the event the Owner or Ground Lessee elects to rebuild buildings or improvements which were located within the FERC Project Area or within twenty-five feet (25') landward measured horizontally from the 1000' contour line that were approved in accordance with Section 4.01(a) above, such buildings or improvements shall be rebuilt in accordance with Section 5.05 below.

**Section 5.03 On-Site Sewage Facility Administration.** The Texas Commission on Environmental Quality (TCEQ) has adopted rules governing on-site sewage facilities (also called septic systems). Declarant is TCEQ's authorized agent for the septic system licensing program, including the enforcement of TCEQ's septic system rules and regulations for the Authority Land. Declarant, as the agent for TCEQ, shall have the authority to access the Authority Land for the purpose of issuing such licenses, inspecting such septic systems, and enforcing any and all rules and regulations related thereto. Each Owner and Ground Lessee agrees to comply with all sanitary regulations and the licensing process adopted by TCEQ and enforced by Declarant, as its agent, from time to time.

**Section 5.04 Solid Waste Collection and Disposal.** The Owner shall be responsible, at its expense, for providing for the collection, removal and disposal of all solid waste on the Property; or the Owner of any portion of the Property shall be responsible for ensuring that the Ground Lessees provide for such collection, removal and disposal of all solid waste on the applicable portion of the Property. In the event the Ranch (or any property association related thereto) fails to provide for the collection, removal and disposal of solid waste related to the Ranch, the Owner shall be responsible for providing for the same.

**Section 5.05 Repairs, Alterations, Rebuilding.**

- (a) An Owner or Ground Lessee, subject to approval by the Federal Energy Regulatory Commission, may repair, alter or rebuild improvements located within the FERC Project Area, which improvements were previously approved in accordance with Section 4.01(a)

above; provided, however, such repairs, alterations, and/or rebuilding shall not extend beyond the footprint of the existing or previously existing improvement.

- (b) An Owner or Ground Lessee, may repair, alter or rebuild improvements located outside the FERC Project Area but within 25' landward measured horizontally from the 1000' contour line, and/or improvements located within the 5' boundary setback, which improvements were previously approved in accordance with Section 4.01(a) above. Such repairs, alterations, or rebuilding may extend such improvements outside the previously existing footprint towards the side boundaries and back boundary of the applicable portion of the Property, but such improvements may not be extended towards the shoreline or encroach closer to the 1000' contour line of the Lake than the existing or previously existing improvements.

Article VI. **MINERAL INTERESTS AND FERC PROJECT AREA**

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

Section 6.01 **Mineral Interests.** Upon conveyance of all or a portion of the Authority Land, Declarant will reserve its rights, title, and interest in all oil, gas and other minerals in and under any and all Authority Land, including the Property.

Section 6.02 **FERC Project Area.** No land within the FERC Project Area shall be improved, used or occupied, except in such manner as shall have been approved by Declarant and, to the extent required, by the Federal Energy Regulatory Commission. No docks, piers, on-water facilities, retaining walls, or any other structures or facilities shall be built, installed or maintained in, on, or over the waters of the Lake or within the FERC Project Area except as authorized by the Declarant. All such structures or facilities shall be subject to all rules and regulations applicable to the Lake and the FERC Project Area, as the same may be adopted or amended from time to time. Owner and/or Ground Lessee shall be responsible for any fees or annual charges assessed by Declarant and/or the Federal Energy Regulatory Commission for such permit or improvements and shall be responsible for ensuring that any such improvements are consistent with the FERC License, Shoreline Management Plan, and all other rules and regulations applicable to the FERC Project Area. Owner shall not, at any time, permit any liens to encumber the FERC Project Area.

Section 6.03 **Lake.**

- (a) No use of the Lake or other bodies of water within the Authority Land, if any, shall be made except in accordance with the FERC License, the Shoreline Management Plan, Declarant's regulations and any other rules and regulations that may be promulgated by the Federal Energy Regulatory Commission and/or Declarant at any time and as amended from time to time. Any such use shall be subject to Declarant's and the Federal Energy Regulatory Commission's superior use rights. Declarant shall not be responsible for any

loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the Lake or other bodies of water within or adjacent to the Authority Land.

- (b) Notwithstanding the foregoing, Declarant may use and regulate the Lake or other bodies of water within the Authority Land for the irrigation of the Retained Land, or for any other purpose deemed appropriate by Declarant, subject to the rights and authority of the Federal Energy Regulatory Commission or other governmental entity having jurisdiction of such areas, and subject to the water rights granted (or which may be granted) to Declarant by the State of Texas. Declarant's rights under this subsection 6.03(b) shall be superior to any rights of any Owner or Ground Lessee. This subsection 6.03(b) shall not be construed to limit or restrict the rights and authority of the Federal Energy Regulatory Commission or other governmental entity having jurisdiction of the Authority Land.
- (c) Owners must obtain written permission from Declarant in accordance with Declarant's regulations to use or divert water from the Lake on any portion of the Property for domestic or commercial purposes.

**Section 6.04 Drainage and Erosion.** No Owner or Ground Lessee shall be permitted to divert or alter the natural drainage of the terrain or clear vegetation on any portion of the Authority Land in such a manner that would cause unnatural erosion or silting of the Lake.

**Section 6.05 Compliance with FERC License.** Owners and Ground Lessees shall take all reasonable precautions to insure that all use of and activities on the Property and the FERC Project Area, including without limitation, the construction, operation and maintenance of any improvements on the Property, and/or FERC Project Area occur in a manner that is in compliance with the FERC License and that will protect the scenic, recreational and environmental values of the Lake. Declarant, as a licensee of the Federal Energy Regulatory Commission has specific approval authority on any proposed construction that impacts the FERC Project Area or lakebed, and Owner and Ground Lessee shall comply with the approval process as may be established by Declarant and/or the Federal Energy Regulatory Commission from time to time.

**Section 6.06 Pre-Existing Structures.** Structures in place within the FERC Project Area shall be subject to the FERC License, as the same may be amended and/or renewed from time to time. Any structures erected in the FERC Project Area after May 15, 1980 (the date of the amendment to the previous FERC License) may be required to be removed at the expense of the Owner or Ground Lessee, unless such improvements are approved in accordance with Section 4.01(a) above. In no event shall this Section 6.06 grant any authorization for a violation of any rules or regulations of Declarant, the FERC License, or any state, federal, or local law.

Article VII. **COMPLIANCE WITH OTHER RULES AND REGULATIONS**

Section 7.01 The Owner and Ground Lessee of any portion of the Property shall comply with all of the following rules and regulations: (i) Declarant's Shoreline Management Plan and any amendments or revisions to that document to the extent such Shoreline Management Plan applies to the Owner's and/or Ground Lessee's portion of the Property; (ii) the applicable rules, regulations, and orders of the Federal Energy Regulatory Commission including, without limitation the FERC License; (iii) Declarant's "Regulations for Governance for Brazos River Authority Lakes and Associated Lands," as published on Declarant's internet website; and (iv) other rules and regulations adopted by Declarant regarding conduct on and use of the Lake or the Authority Land.

Section 7.02 Intentionally Deleted.

Section 7.03 By Texas Statute, Declarant is empowered to adopt and has adopted certain regulations governing conduct on and use of the FERC Project Area and Lake. Owners, Ground Lessees and persons using the Property with such Owners' consent, shall abide by all such rules and regulations adopted from time to time by Declarant and any future revisions and amendments thereto.

Section 7.04 Owners and Ground Lessees of that portion of the Property which is part of the Ranch shall comply with the terms and conditions of the Ranch Agreement and the covenants and restrictions set forth in the Ranch Declarations, to the extent applicable to such portion of the Property. As to that portion of the Authority Land which is part of the Ranch, the Ranch Declarations shall control in the event of any conflict between the covenants, restrictions, and conditions set forth in the Ranch Declarations and the Restrictions set forth in this Declaration.

Section 7.05 Owners and Ground Lessees of that portion of the Property which is part of Green Acres shall comply with the covenants and restrictions set forth in the Green Acres Declarations, to the extent applicable to such portion of the Property. As to that portion of the Authority Land which is part of Green Acres, the Green Acres Declarations shall control in the event of any conflict between the covenants, restrictions, and conditions set forth in the Green Acres Declarations and the Restrictions set forth in this Declaration.

#### Article VIII. **LAKE PRESERVATION**

Section 8.01 In order to maintain the quality of the Lake's water, the stability of the shoreline, and of the environment in the Lake's vicinity, each Owner and Ground Lessee of all or any portion of the Property agrees to:

- (a) comply with any local, state, or federal laws related to water quality or the environment, including laws governing toxic wastes and hazardous substances;

- (b) if the Owner's private on-site sewerage facility is not licensed by the Texas Commission on Environmental Quality (or any successor to such Commission) then the Owner or Ground Lessee shall connect to and use, at the Owner's or Ground Lessee's expense, as applicable, any wastewater treatment system or service that becomes available to the Owner's portion of the Property, not later than twelve (12) months after the system or service becomes available to such portion of the Property and thereafter discontinue use of any private on-site sewerage facility; and if, at any time after a wastewater treatment system or service becomes available to the Owner's portion of the Property, the Owner's private on-site sewerage facility (whether licensed or not) requires either replacement or an alteration or change in the on-site sewage facility resulting in (A) an increase in the volume of permitted flow, (B) a change in the nature of permitted influent, (C) a change from the planning materials approved by the permitting authority, (D) a change in construction, and/or (E) an increase, lengthening, or expansion of the treatment or disposal system, then such Owner shall promptly connect to and use, at the Owner's or Leaseholder's expense, as applicable, such wastewater treatment system or service and thereafter discontinue use of any private on-site sewerage facility. Notwithstanding the foregoing, in the event a property owners association or municipality requires the Owners of the portion of the Property which are included in such association or municipality to connect to a wastewater system or service, then such association or municipality rules shall control; and
- (c) obtain written consent of Declarant prior to diverting or pumping water from the Lake or any body of water within or adjacent to the Authority Land, constructing or erecting any embankment or retaining wall, or commencing any dredging activity; and
- (d) pay to Declarant any reasonable fee related thereto (e.g., water usage, recreational user, dredging, or retaining wall fees) as may be adopted from time to time by Declarant.

Section 8.02 Each Owner of all or any portion of the Property agrees and acknowledges that the water level in the Lake varies and that Declarant is not responsible for maintaining the Lake at any certain level or above or below any certain level.

Section 8.03 Declarant is not responsible or liable for any personal injury or damage to any Owner, Ground Lessee, the Property, the Authority Land, or to any improvements caused by any increase or decrease in the water level (even if such increase or decrease is due to modifications of the Morris Sheppard (Possum Kingdom) Dam or other actions or omissions of Declarant) or caused by natural flooding.

Section 8.04 Upon conveyance of all or a portion of the Property, Declarant will reserve the right of ingress and egress for Declarant and any person authorized by Declarant, including an agent of Declarant or employees, over and across the Property and any and all on-water facilities whether located within the Property or FERC Project Area for all reasonable purposes of Declarant, including, without limitation, the construction, maintenance, repair, and/or replacements of any roads,

drainage facilities and power, water, wastewater, and other utility mains and lines that Declarant considers necessary or beneficial and for public safety, health, and welfare purposes; provided however, that (i) Declarant shall provide written notice at least 48 hours in advance of such entry to the Owner of such portion of the Property (except in the event of an emergency in which case advance notice shall not be required, but Declarant shall provide such written notice as soon as practicable thereafter), which notice shall state with reasonable specificity the purpose for such entry, (ii) Declarant shall promptly repair any damage to the Property caused by Declarant's entrance onto such Owner's portion of the Property; and (iii) Declarant shall use reasonable efforts to avoid interfering with the Owner's use of such Owner's portion of the Property.

Article IX. **COMPLIANCE AND ENFORCEMENT OF RESTRICTIONS**

Section 9.01 **Compliance with Restrictions.** Each Owner and Ground Lessee shall comply strictly with this Declaration and the Restrictions set forth herein, as the same may be amended from time to time. Failure to comply with such Declaration and Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Declarant or other Owners; provided however, no Owner, Ground Lessee, or other person shall have any right of action against Declarant arising under this Declaration.

Section 9.02 **No Warranty of Enforceability.** Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms or provisions set forth herein. Any Owner or Ground Lessee acquiring or leasing, as applicable, any portion of the Authority Land in reliance on one or more of such Restrictions, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring such portion of the Authority Land, agrees to hold Declarant harmless therefrom.

Section 9.03 **Declarant's Right to Enter.** If the Owner or Ground Lessee of any portion of the Property or on-water facilities related thereto (including retaining walls) (the "Defaulting Owner") shall fail to comply with the requirements of this Declaration, then Declarant shall have the right, but not the obligation, following thirty (30) days prior written notice to the Defaulting Owner to enter the Defaulting Owner's portion of the Property (but only if such failure to comply results in a public health, safety, or welfare concern) and/or the Defaulting Owner's on-water facility and cure such breach, the cost of which shall be reimbursed by the Defaulting Owner to Declarant upon demand. Any such unpaid amounts, together with interest thereon (at the rate of six percent (6%) per annum) and the costs of collection (if any), shall be charged as a continuing lien against the Defaulting Owner's portion of the Property, which lien shall be subordinate to the lien of any third party deed of trust previously recorded against the Defaulting Owner's portion of the Property.



Section 9.04 **Default.** A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from Declarant or other Owner specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person commences the cure of such default within such (30) day period and thereafter is continuously using good faith and its best efforts to rectify the particulars specified in the notice of default.

Section 9.05 **Right of Enforcement.** Declarant shall have the right, but not the obligation, to enforce all of the provisions of the Restrictions. Any Owner shall have the right to enforce all of the provisions of the Restrictions against any other Owner or Ground Lessee, but not against Declarant. Such right of enforcement shall include the right to sue for both damages for, and injunctive relieve against, the breach of any such provision. Furthermore, Declarant shall have the right, when appropriate in its sole judgment and discretion, to claim or impose a lien upon any portion of the Property, or improvements constructed thereon, in order to enforce any right or effect compliance with this Declaration.

Section 9.06 **Waiver.** The failure of a person (including Declarant or any Owner) to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

Section 9.07 **Nonliability of Declarant.** Declarant shall not be liable to any Owner, Ground Lessee, or any other person for any loss, damage, or injury arising out of or in any way connected with the performance or non-performance of Declarant's rights, obligations or privileges under this Declaration. Without limiting the foregoing, Declarant shall not be liable to any Owner or Ground Lessee due to the construction of any improvements within the Authority Land.

Article X.

**GENERAL PROVISIONS**

Section 10.01 **Covenants Run With the Land.** Each of the Restrictions on the Property shall be a burden on each portion of the Property, shall be appurtenant to and for the benefit of the Authority Land and other portions of the Property and each part thereof and shall run with the land.

Section 10.02 **Successors and Assigns.** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person

acquiring all or any portion of the Property, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in all or any portion of the Property, such Owner shall, upon the sale and conveyance of title, be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of all or any such portion of the Property, (including, without limitation, any Owner [or Lienholder] who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such portion of the Property on and/or after the date of sale and conveyance of title. Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and obligations (if any) under this Declaration to any other person and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights, and obligations (if any) hereunder.

**Section 10.03 Intentionally Deleted.**

**Section 10.04 Duration.** Except as provided herein, the term of this Declaration shall be for a period of fifty (50) years (the "Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of five (5) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, (i) the Owners of at least sixty percent (60%) of the individual lots which comprise the Residential Leased Land and Commercial Leased Land, and (ii) the Owners of at least sixty percent (60%) of the land area of the Retained Land; and (iii) Declarant, for so long as Declarant has any interest in the Authority Land, whether as an Owner or holder of the FERC License or otherwise, duly execute, acknowledge and record in the office of the recorder of the counties in which the Authority Land is located a written termination notice, in which event, this Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

**Section 10.05 Intentionally Deleted.**

**Section 10.06 Intentionally Deleted.**

**Section 10.07 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Authority Land to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

**Section 10.08 Mortgages Subordinate to Declaration.** Any mortgage or deed of trust lien entered into after the date of this Declaration which affects any portion of the Property shall at all times be subject and subordinate to the terms of this Declaration and any person acquiring title by reason of foreclosure under any such mortgage or a deed in lieu of foreclosure shall acquire title to the premises affected thereby subject to all of the terms of this Declaration.

**Section 10.09 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**Section 10.10 Notices.**

- (a) Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by facsimile, personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address or facsimile number set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the applicable county in which the applicable portion of the Authority Land is located. All notices to Declarant shall be sent to the appropriate party at the address or facsimile number set forth below:

Declarant: Brazos River Authority  
4600 Cobbs Drive  
P.O. Box 7555  
Waco, Texas 76714-7555  
Attn:  
Fax: \_\_\_\_\_

All notices given pursuant to this Declaration shall be deemed given upon receipt.

- (b) Receipt. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

Section 10.11 **Attorney's Fees.** In the event Declarant initiates or defends any legal action or proceeding in any way connected with this Declaration, the Declarant (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the adverse party or parties in any such action or proceeding Declarant's reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal).

Section 10.12 **Severability.** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

Section 10.13 **Intentionally Deleted.**

Section 10.14 **Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

Section 10.15 **Construction.** In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

Section 10.16 **Recordation.** This Declaration shall be recorded in the office of the recorder of the counties in which the Authority Land is located.

Section 10.17 **Interpretation.** The provisions of this instrument shall be governed by, and construed in accordance with, the laws of the State of Texas, and this instrument shall be fully performable and enforceable in the Counties of Jack, Palo Pinto, Stephens and Young in the State of Texas (as applicable to the portion of the Authority Land in question). In the event of any conflict between the provisions of this instrument and any applicable zoning ordinance or other applicable regulations of the applicable county, as amended, and in effect from time to time, the more restrictive provision shall govern and control. Notwithstanding any custom, rule of interpretation or construction, or otherwise, neither this Declaration, nor any portion hereof, shall be construed more strongly against the party who prepared it.

EXECUTED as of the date first set forth above.

**[SIGNATURE AND ACKNOWLEDGMENT PAGE OF DECLARANT FOLLOWS]**

**List of Exhibits and Schedules:**

**Exhibit "A" – The Authority Land**

**Exhibit "B" – The Commercial Leased Land**

**Exhibit "C" – The Property**

**Exhibit "D" – The Residential Leased Land**

**Exhibit "E" – The Retained Land**

**Exhibit "F" – Roads**

**Exhibit "G" – Undeveloped Strips**

**[SIGNATURE AND ACKNOWLEDGMENT PAGE OF DECLARANT]**

**DECLARANT:**

**BRAZOS RIVER AUTHORITY,  
a River Authority of the State of Texas**

**By: \_\_\_\_\_**

**Name: Phil Ford**

**Title: General Manager/CEO**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Phil Ford, to me known to be the General Manager/CEO of Brazos River Authority, the River Authority that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said River Authority, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Texas