

Edwards County

Declaration**011206**

Imposing Protective Covenants, Conditions and Restrictions
and
Creating a Subdivision Landowners Association
for

Indian Creek Ranches - Phase III
A Subdivision in Edwards County, Texas

THE STATE OF TEXAS

§
§
§
§

Know All Persons By These Presents:

COUNTY OF EDWARDS

WHEREAS, HIGH COUNTRY LAND & CATTLE CO. a Texas Corporation, acting by and through it duly authorized president, WILLIAM C. COCKE, SR., whose mailing address is 3866 S. STAPLES, CORPUS CHRISTI, NUECES COUNTY, TEXAS, 78413, hereinafter referred to as "Declarant", is the present legal and equitable owner and holder of all that certain tract or parcel of real property situated in Edwards County, Texas, hereinafter sometimes referred to as the "Property", "Subject Property", "subdivision" or "Phase III", and which is more fully described as follows:

INDIAN CREEK RANCHES, Phase III, a Subdivision situated about 13.1 miles S 35° W of Rocksprings, in Edwards County, Texas, being 1025.32 acres out of a 10,892.22-acre tract of land conveyed as an assignment of note to Mary Peterson Wyatt Trust by Deed dated July 12, 1984, and recorded in Vol 65, Pg 30 of the Deed Records of Edwards County, Texas, as shown by the map or plat of said subdivision recorded in Vol 2, Pg 78A and 78B, Plat Records of Edwards County, Texas.

Easement. Phase III, as hereinabove described, includes a non-exclusive sixty-foot (60') road easement over, on and across that portion of Indian Creek Ranches Subdivision Phase II as noted on the recorded plat of the subdivision recorded in Vol 66A, pg(s) 66B of the Plat Records of Edwards County, Texas, the description of which easement is incorporated fully herein by reference.

AND WHEREAS, the Declarant hereby dedicates and will convey all of the property subject to certain protective covenants, conditions and restrictions, as hereinafter set forth, establishing the INDIAN CREEK PHASE III SUBDIVISION LANDOWNERS ASSOCIATION (referred to as the "Landowners Association") and ultimately wishes to submit the subject property to the supervision and control of said association for the purpose of supervising, controlling, constructing and maintaining the water well located on Tract 9 and the Easement, roads and rights of way presently in existence or to be built or placed in the future, as the case may be, in, upon, across and along the sixty (60) foot wide ingress, egress and regress passageway or roadway easement for the non-exclusive, free and uninterrupted use, liberty, privilege and easement of passing by the Owners of the property, their tenants, guests and invitees.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that it is hereby expressly declared that all of the subdivision shall be held, sold and conveyed subject to this declaration and dedication, which is for the purpose of protecting the value and desirability of the subject property and of supervising, controlling, constructing and maintaining the windmill/water well and Easement which shall run with and bind the subject property, which shall be binding upon any and all parties having any right, title or interest in or to any of the acreage which comprises the subject property, and their respective heirs, legal representatives, successors and assigns, and which shall inure to the benefit of and be enforceable by the Declarant and each and every Owner and Holder of any portion of the acreage which

alter, reconfigure, and/or withdraw any portion of Phase III of the subject property until its conveyance of said Phase III tracts, as the case may be, provided such action does not decrease the size of any platted tract below 100 acres. This is a right coupled with an interest, and every Owner, by accepting title to a tract, appoints Declarant as his agent for this limited purpose, and Declarant, as agent, can act for any Owner in consenting to any action to replat, alter, reconfigure and/or withdraw the subject property. Further, Declarant represents and advises all future Owners that contemplated future phases adjacent to the subject property is or may be subject to one or more liens and lien instruments which are filed of record in Edwards County, Texas.

DEFINITIONS, INCLUDING THE FOLLOWING:

- (1) The term "Owner" shall refer to the record owner or holder, whether one or more, whether masculine, feminine or neuter, or whether a natural person, corporation, trust or other legal entity, of the record title to any portion of the property.
- (2) The term "Declarant" shall refer to HIGH COUNTRY LAND & CATTLE CO., a Texas Corporation, its heirs, successors in interest, personal representatives and assigns, or Declarant's designated successors or assigns which shall assume all of the rights and responsibilities of Declarant herein.
- (3) The term "Committee" refers to the Indian Creek Ranches Phase III Subdivision Road Maintenance Committee.
- (4) The term "Association" refers to the Indian Creek Ranches Phase III Subdivision Landowners Association.
- (5) The terms "property" or "property" and "subdivision" shall include any additional real property owned by Declarant or Declarant's successors or assigns (whether by contract or by title), now or in the future, as long as such additional real property is:
 - (i) contiguous or adjacent to the real property now constituting the subdivision as set forth in the plat or to any real property contiguous or adjacent to any such additional real property;
 - (ii) to be subdivided by Declarant pursuant to a plat filed of record in Edwards County, Texas, and restrictions (supplemental or separate) are filed by Declarant indicating that such additional property will constitute an addition to the subdivision; and
 - (iii) to be developed by Declarant in a manner consistent with the concept contemplated by this Declaration.
- (6) The term "adjacent property" as used herein means the property adjacent to or in proximity to the original 10,892.22 acre tract.

Additional Property added by Supplement or Separate Declaration of Restrictions: Platting. Such additional real property may be made subject to this declaration by Declarant without the consent of any Member or Owner, which consent is expressly waived by each Member and Owner, at any time and from time to time by adding to the property or by filing of record a Supplement to this Declaration, which shall extend the concept and application of the covenants, conditions and restrictions of this Declaration to such additional real property, PROVIDED, HOWEVER, that such Supplement may contain such complementary additions and conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the adding properties and as are now inconsistent with the concept of the restrictions, covenants and conditions. Declarant may make any such addition even though at the time such addition is made Declarant is not the owner of any portion of the property described in the original Plat. Each supplement may designate the number of separate plots or tracts comprising the properties added which are to constitute tracts, or such designation may be deferred to further and subsequent Supplements. For the purpose of compliance with state and county platting regulations and laws, as well as the orderly development, use and conveyance of the original ranch property, Declarant

reserves the right to plat and convey adjacent property tracts and adjacent large tracts within the same or separate future phases, if any, of the Indian Creek Ranches Phase III Subdivision, and to designate by Supplement to this Declaration which of said adjacent property tracts or larger tracts shall be subject to the terms and conditions of these Restrictions for the Indian Creek Ranches Subdivision, including the submission or exclusion of said adjacent property to the owners' association and/or road maintenance conditions or obligations, and by the filing of applicable supplemental restrictions or separate restrictions as to such adjacent property.

USE RESTRICTIONS SHALL INCLUDE THE FOLLOWING:

1. No hunting blinds, deer feeders, buildings, houses, mobile homes, manufactured homes, motor homes, houses, or other type of structure, whether temporary or permanent, can be placed within two hundred feet of the edge of any public road; however Declarant, in its sole discretion may grant a variance to allow permanent homes, with restrictions on the size, plan and building materials. Any variance must be in writing, describe the tract and contain the restrictions and be signed and acknowledged by Declarant and filed in the Official Public Records of Edwards County, Texas.
2. No commercial business shall be allowed. Commercial business is defined as:
 - (a) A business wherein the public is allowed to come to a tract within the subdivision to view or purchase personal property; or,
 - (b) A business which manufacturers or processes items which results in or produces excessive or offensive odor, smoke, noise, or traffic to the neighbors and owners in the subdivision; or
 - (c) A business which requires transport or delivery trucks to pick up or deliver items to the property within the subdivision.
3. No commercial hunting is allowed. Commercial hunting exists when a landowner allows one or more persons to hunt game animals or game birds of any kind on any property for a fee or consideration of any kind.
4. Trapping of game animals (including exotic) or game birds is prohibited.
5. Until January 1, 2020, no tract may be divided which will result in a tract being less than 100 acres. An exception to this restriction is the small Tract #3 shown and included in the original plat of Indian Creek Ranches Subdivision, Phase III.
6. No noxious or offensive activity shall be permitted upon any of the acreage which comprises the subject property nor shall anything be done thereon which may be or may become an annoyance or nuisance in the area.
7. None of the acreage which comprises the subject property shall be used or maintained as a dumping ground for rubbish, garbage or trash.
8. No junkyards shall be maintained upon any of the acreage which comprises the subject property.
9. No swine (pig or hog) farm commercial operation or enterprise shall be maintained upon any of the acreage which comprises the subject property.
10. No animal feed lot commercial operation or enterprise shall be maintained upon any of the acreage which comprises the subject property.
11. Any prohibition or condition contained in or on the Plat of the Property, or contained herein otherwise.
12. There is situated upon Tract #9 a water well. The owner of Tract #9 shall at all times allow the

Association and their representatives, employees and contractors, access to the two water wells for the purpose of maintenance, repair and replacement. The two water wells are for the use and benefit of all Owners, acting through the Association which has an unrestricted right to water produced therefrom, including the right to distribute the water by pipeline throughout the Subdivision. Any owner of Tract #9 takes title subject to these matters which run with the land.

13. In order to preserve the current open-space land valuation for ad valorem tax purposes, each Owner of any unfenced tract shall, upon acquisition of the tract, execute a lease agreement with Declarant (or its assigns) which provides for a one year lease of the tract to Declarant (or its assigns) for the grazing of cattle only with automatic one year extensions at the yearly rental of \$10.00 without right of termination by Lessor unless such tract is separately qualified for open-space land valuation by the Edwards County tax authority.

CREATION OF THE INDIAN CREEK RANCHES ROAD AND WATER WELL MAINTENANCE COMMITTEE AND LANDOWNERS ASSOCIATION

I. INDIAN CREEK RANCHES SUBDIVISION ROAD AND WATER WELL MAINTENANCE COMMITTEE

There is hereby created and activated the INDIAN CREEK RANCHES SUBDIVISION ROAD AND WATER WELL MAINTENANCE COMMITTEE for the purpose of supervising, controlling, constructing and maintaining the road easement(s) and maintaining, repairing or replacing the water well located on Tract #9 and for the further purpose of performing such other duties and responsibilities as are allocated to it under any of the other terms, conditions and provisions of this Declaration. The Committee is also given the authority to enforce this Declaration in any manner it deems appropriate and to act for the best interest of the INDIAN CREEK RANCHES SUBDIVISION, PHASE III, a subdivision in Edwards County, Texas. The initial member of the Committee shall be Declarant's President, William C. Cocke, Sr. Thereafter, and upon the sale of all of the acreage comprising INDIAN CREEK RANCHES SUBDIVISION, PHASE III, the Committee shall be composed of three (3) members chosen by the Association as hereinafter provided. If any one (1) or more of the Committee members fails, refuses or is unable to serve, the remaining members are hereby authorized to and shall appoint a person or persons as replacement members. In the event all of the Committee members fail, refuse or are unable to serve, then the Association shall elect a new Committee, each Owner to have one (1) vote in such election for each tract which said Owner owns.

II. INDIAN CREEK RANCHES PHASE III LANDOWNERS ASSOCIATION

2.01. There is hereby created and established the INDIAN CREEK RANCHES SUBDIVISION, PHASE III Landowner Association. Each Owner shall be a Member of the Association. By the acceptance of a Deed to any portion of the acreage comprising the subject property, the Owner thereof personally agrees to be and becomes a Member of the Association and agrees to be and becomes bound and obligated by the terms, conditions and provisions of this Declaration. The Association shall be activated at such time as may be determined by the Declarant in its sole and absolute discretion, but in no event shall such Association be activated later than thirty (30) days following the date that the Declarant has sold all of the acreage comprising the subject property. A meeting of all of the Members of the Association shall be called within thirty (30) days following the date of the activation of the Association for the purpose of electing a new INDIAN CREEK RANCHES SUBDIVISION ROAD AND WINDMILL/WATER WELL MAINTENANCE COMMITTEE and conducting such other business as may be properly brought before such meeting. Each Member shall be entitled to one (1) vote in the Association for each tract owned. When more than one (1) person owns an interest in any of the acreage which comprises the subject property, all persons shall be members of the Association, but they shall collectively cast only one

(1) vote for each tract owned. The Association shall not be incorporated but shall act by simple majority vote in accordance with the terms, conditions and provisions of this Declaration; provided, however, should a majority of the owners so elect for good cause, then the Association may become a corporation under the Texas Non-Profit Corporation Act, subject to its Articles and By-laws being substantially in compliance with the terms hereof.

III. ASSESSMENTS OR CHARGES

3.01 Annual Assessments. Each tract which comprises the subject property is subject to an annual road, water well, waterline maintenance assessment or charge, as follows: Each Owner authorizes the Declarant, and Declarant's successors in interest and assigns, including the Committee, to improve and maintain the easement(s), and to maintain, repair and replace, if necessary, the water well located on Tract #9 and the waterline laid throughout the Subdivision. Further, the Declarant, and the Association (when formed) is authorized to assess and charge each tract owner a fee of Two and No/100 Dollars (\$2.00) per acre per year, not to exceed \$300.00 per year. Such charge shall not be assessed against the Declarant or Declarant's successors and assigns. Such charge shall be made by direct billing to each property owner. If any property Owner refuses or fails to pay the charge, then at Declarant's option, Declarant may deduct the charge from payments made by the property Owner on any purchase money promissory note owing by property owner to Declarant, and any such charge so deducted will not be credited to the payment on the balance owing on any such promissory note, principal or interest. The maintenance charge, if not paid within 60 days from the date of the billing date, will become a lien against the tract so assessed, and the enforcement of the lien will be made according to the provisions contained herein and as allowed by law. The annual charge may be increased annually by majority vote of the Committee, provided, said increase may not exceed ten percent (10%) without a majority vote of the votes entitled to be cast at a special meeting of the Association called for that purpose.

If such annual maintenance charge is not paid within the 60 day period, then the annual maintenance charge shall be deemed delinquent and shall bear interest at the amount of ten percent (10%) per annum. As used in this Declaration, the terms "annual assessment" and "maintenance charge" shall be considered to be the same.

3.02 Special Assessments. In addition to the annual assessments authorized above, and subject to the assent of fifty-one percent (51%) of Owners voting in person or by proxy at a meeting called for that purpose, the Association may levy, only as provided herein, in any assessment year, a single special assessment applicable to that year only for the purpose of defraying, in whole or in part, the expense and cost of any construction, renewal, maintenance, repair and replacement of the Easement(s), the water well, the waterline and for any other purpose as may be deemed necessary or desirable by the Association to maintain, operate or improve the subdivision in the manner which it considers to be the greatest benefit to the Owners. Notice of the meeting called for this purpose shall be sent to all Owners not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting, with the meeting to be held in Edwards County, Texas on the date and at the time and place specified in the notice. Any such special assessment or charge, as the case may be, must be fixed at a uniform rate for all of the acreage comprising the subject property.

IV. OBLIGATIONS OF THE OWNERS.

4.01 Payment of Assessments. Each Owner of any portion of the acreage which comprises the subject property covenants and agrees, by acceptance of a Deed to any such acreage or tract, to pay to the Association an annual assessment or charge each year, as the case may be, as well as any special assessment duly authorized. The annual assessment and/or special assessment or charge, together with interest, cost and reasonable attorneys fees, shall, to the full extent permitted by law, be a charge against and a lien upon that portion of the acreage which comprises the subject property owned or held by each

respective Owner and shall be a continuing lien upon that portion of the acreage which comprises the subject property against which such annual assessment or charge, as the case may be, is made. Each such annual assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of that portion of the acreage which comprises the subject property against which such assessment is made at the time such assessment or charge, as the case may be, was due. The Committee is expressly authorized and may collect and administer all assessments or charges, as the case may be.

4.02 Lien for Annual Assessment or Charge. The lien for any assessment or charge, as the case may be, shall be subordinate to the lien created by any superior mortgage securing a purchase money or improvement loan. The sale or transfer, as the case may be, of any portion of the acreage which comprises the subject property shall not affect the assessment or charge, as the case may be, lien and such sale or transfer, as the case may be, shall be subject to such lien. No sale or transfer, as the case may be, shall relieve the Owner of any portion of the acreage which comprises the Subject Property against which such assessment or charge, as the case may be, is made from individual liability for the assessment or charge, as the case may be, made during the period of his, her, their, or its ownership and extinguishment of the lien shall not relieve such Owner of his, her, their or its personal obligation and liability. No lien for any assessment or charge, as the case may be, shall be impressed against any portion of the acreage which comprises the subject property as long as the Veterans Land Board of the State of Texas holds record title thereto; provided, however, that this only applies to purchases made under The Veterans Land Board of the State of Texas Program.

V.

NOTICE AND RESERVATION, AND SPECIAL PROVISIONS.

5.01 Pursuant to the Edwards County Comprehensive Regulations for the Subdivision of Land, as amended, and in lieu of placing same on the original plat as filed (or in addition to inserting same on the Subdivision Plat), the conveyance herein is subject to and shall be subject to the following regulations and/or notices, including any circumstance or condition reflected thereby, and the Owners and public are hereby given notice regarding same:

- A. Reference to Regulation 3.00d.(1)(L)(II),(C)(I). If Private Access to Remain Private or Access is in whole or part by Existing County Road.

(c)(I) If the developer's, subdivider's or owner's written easement agreement covering that portion or portions of the route accessing the subdivision that is to remain private does not satisfy the minimum design and construction requirements then in effect for county roads, e.g., the written easement right-of-way width is less than sixty feet, then there shall be placed on the plat a notice indicating that such access route may never qualify or become eligible for dedication as a county road to be maintained by Edwards County. Plat Form 18-3.Ood(1)(L)(ii)(c)(I) shall be used for this purpose.

- B. Reference to Plat Form 18-3.Ood(1)(L)(ii)(c)(I) of Regulations:

PRIVATE ACCESS ROAD TO SUBDIVISION.

NOTICE: Those portions of the access road(s) to this subdivision which are private, and not public, may not meet the minimum design and construction requirements currently in effect for county roads, such that said private roads may never qualify or become eligible for dedication as a county road to be maintained by Edwards County, and therefore such maintenance may be perpetually the responsibility and cost of the users thereof.

ASSOCIATION HAS THE RIGHT TO REQUEST THE COUNTY OF EDWARDS, STATE OF TEXAS, TO SUPERVISE, CONTROL, CONSTRUCT OR MAINTAIN THE ROAD EASEMENT UNTIL SUCH TIME AS SAID ROAD EASEMENT HAS BEEN IMPROVED TO SUCH AN EXTENT THAT IT MEETS THE COUNTY SPECIFICATIONS FOR LIKE OR SIMILAR ROADS THAT ARE IN EXISTENCE AT THE TIME ANY SUCH REQUEST BE MADE.

**VI.
NOTICE AND RESERVATION, AND SPECIAL PROVISIONS.**

6.01 The Declarant or any Owner shall have the right to enforce by any legal proceeding at law or in equity, as the case may be, all of the covenants, conditions, or restrictions now or hereafter imposed under or by virtue of the terms, conditions and provisions of this Declaration. Failure to enforce any covenant, condition or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter.

6.02 Invalidation of any one (1) or more covenants, conditions, or restrictions contained in this Declaration by judgment and/or court order and/or otherwise, as the case may be, shall in no way affect any of the other covenants, conditions, and restrictions herein contained and all such other covenants, conditions and restrictions herein contained shall remain in full force and effect.

6.03 The terms, conditions, and provisions of this Declaration shall run with and bind the subject property, and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any of the acreage which comprises the subject property, as the case may be, and their respective legal representatives, successors and assigns, and shall be effective for a period of twenty (20) years from the date of this Declaration, after which time the terms, conditions, and provisions of this Declaration shall be automatically extended for successive periods of ten (10) year.

6.04 The terms, conditions and provisions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners of the acreage which comprises the Subject Property and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners of the acreage which comprised the subject property. These Deed Restrictions may be amended by the Declarant without joinder for four (4) years after filing hereof by Declarant if said amendment does not materially affect the owners and serves (i) to correct a minor error or errors herein, and/or (ii) for the reasonable improvement of the Subdivision. No amendment shall be effective until recorded in the Office of the County Clerk of Edwards County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

6.05 The liability of any Owner of any of the acreage which comprises the subject property for performance of any of the terms, conditions and provisions of this Declaration shall terminate upon sale and/or transfer and/or assignment and/or other divestiture, as the case may be, of said Owner's entire interest in and to his respective portion of any of the acreage which comprises the subject property with respect to any obligations arising from and after the date of such sale and/or transfer and/or assignment and/or other divestiture, as the case may be.

6.06 As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine and the neuter unless the context requires the contrary. All headings are not a part hereof and shall not affect the interpretation of any of the terms, conditions and provisions of this Declaration.

6.07 This Declaration, as well as any supplement or amendment thereto and any valid action or directive made under and by virtue of it, shall be binding upon the Declarant and the Owners of any of the acreage which comprises the subject property, their legal representatives, successors and assigns.