

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR INDIAN HILLS RANCH**

**STATE OF TEXAS §
 §
COUNTY OF HAYS §**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions for Indian Hills Ranch (this "Amendment") effective as of the date provided below, is made and executed by FARM CREDIT BANK OF TEXAS, a banking corporation chartered under the Farm Credit Act of 1971 (Public Law 92-181), as amended (the "Declarant"), as follows:

RECITALS

A. Declarant is the developer of Indian Hills Ranch, a development in Hays County, Texas.

B. Pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Indian Hills Ranch recorded at Volume 1156, Page 383 of the Real Property Records of Hays County, Texas, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Indian Hills Ranch, recorded in the Real Property Records of Hays County, Texas (such instrument as amended, the "Declaration"), Declarant imposed certain covenants, conditions and restrictions on the subdivision formed and created out of the subject development, as more fully set forth in the Declaration.

C. As of the date of execution of this Declaration, Declarant holds a majority of the votes of the Association. Under the provisions of Section 7.3(a) of the Declaration, Declarant, without the approval or joinder of any other Owner, is entitled to amend the Declaration as long as Declarant provides all other Owners with a copy of this Declaration. Prior to recording this Amendment in the Real Property Records of Hays County, Texas, Declarant has provided all other Owners of Lots out of the Property with a copy of this Amendment.

D. Declarant desires to amend the Declaration to amend and supplement various provisions of the Declaration.

NOW, THEREFORE, for and in consideration of the foregoing, this Amendment is executed by Declarant on the following terms and conditions:

1. **Modification of the Declaration.** The Declaration is modified and amended as provided in the following paragraphs:

1.1 The Declaration is amended by adding the following as Article 8 of the Declaration:

ARTICLE 8 +
THE GRAZING LEASE

8.1 **The Grazing Lease.** Prior to the sale by Declarant of any of the Lots, all of the Property (including all of the Lots) was leased for grazing, pasturing and related agricultural uses pursuant to a Cash Pasture Lease Agreement dated December 20, 1995, between Declarant, as Lessor, and Kyle Parker, as Lessee (the "Original Grazing Lease"). All Lots sold by Declarant have been sold subject to the Original Grazing Lease. By this Article, provision is made for any and all of the Owners to continue leasing their respective Lots for grazing, pasturing and related agricultural uses and the appointment of the Association as the agent and attorney-in-fact for the Owners for purposes related to the Grazing Lease. As used in this Declaration, the term "Grazing Lease" shall mean the Original Grazing Lease, any and all renewals, extensions and amendments of the Original Grazing Lease, and any other lease covering all or any of the Lots which is executed pursuant to this Article 8 for grazing, pasturing and related agricultural uses.

8.2 **The Association as Agent.**

(a) Subject to the terms and conditions of this Article 8, either the execution and delivery to the Association by an Owner of a written acknowledgment and appointment in substantially the form of the acknowledgment and appointment set forth on Exhibit B attached to this instrument (a "Leasing Appointment"), or the acceptance by an Owner of a payment for such Owner's pro-rata share of any rental payment made under a Grazing Lease, (i) shall be an election to make the Lot or Lots owned by the subject Owner (a "Leasing Owner") subject to each Grazing Lease, and (ii) shall irrevocably constitute and appoint the Association as such Leasing Owner's true and lawful agent and attorney-in-fact to (A) execute, acknowledge, verify, swear to, deliver, record and/or file in the subject Leasing Owner's name, place and stead a renewal, extension and amendment of the Original Grazing Lease and/or a new Grazing Lease covering such Leasing Owner's Lot, and any and all instruments, documents and certificates which may at any time and from time to time be required in order to lease such Leasing Owner's Lot for grazing, pasturing and related agricultural purposes, and (B) have, hold, exercise and enjoy the rights, authority and powers of the Association as such agent and attorney-in-fact which are provided under the provisions of this Article 8. For purposes of evidencing an Owner's consent to the provisions set forth in this Article 8, a canceled check payable or endorsed to an Owner for payment to such Owner of such Owner's pro-rata share of a rental payment under a Grazing Lease shall be conclusive proof of the subject Owner's agreement and consent to the provisions of this Article 8.

(b) Except as otherwise provided in this Article 8, any Grazing Lease (including any renewal of the Original Grazing Lease) executed by the Association under the provisions of this Article 8 as agent and attorney-in-fact of any Leasing Owner shall be substantially on the terms and in the form of the Original Grazing Lease; provided, however, that the Association may agree to different provisions regarding the lease term and the rent of any such Grazing Lease executed by the Association under the provisions of this Article 8 and may make such changes, additions and revisions to the terms and provisions of any such Grazing Lease executed by the Association under the provisions of this Article 8 as the Association, in its discretion, deems necessary and/or appropriate and in the best interest of each Leasing Owner to carry out the purposes of such lease on a basis consistent with the provisions of this Article 8. All other agreements, contracts, instrument, documents and certificates that may be executed by the Association under the provisions of this Article 8 as agent and attorney-in-fact of any Leasing Owner shall be on such terms and conditions as the Association, in its discretion, deems necessary or appropriate and in the best interest of each Leasing Owner in order to effect the purposes of this Article 8. The Association's signature on any Grazing Lease or any other agreements, contracts, instrument, documents and certificates that may be executed by the Association under the special power of attorney provided under this Article 8 shall be conclusive evidence that the Association did deem the same to be necessary or appropriate and in the best interest of each Leasing Owner in order to effect such purposes.

(c) No person dealing with the Association shall be under any duty to see to or make any inquiry concerning proper application of any funds or property paid or delivered to the Association pursuant to this special power of attorney. Every person dealing with the Association shall be fully protected in treating this special power of attorney as continuing in full force and effect until an instrument of revocation duly executed by each Leasing Owner has been filed for record in the office of the County Clerk of Hays County, Texas, or this special power of attorney expires by its own terms. Every person dealing with the Association shall likewise be protected without any search of the records of the office of the County Clerk of Hays County, Texas in acting and relying on any certificate of the Association that this special power of attorney has not been revoked and is in full force and effect. Each Leasing Owner hereby agrees to be bound by any and all representations, warranties, covenants and agreements made by the Association acting in good faith pursuant to this special power of attorney, and each Leasing Owner hereby waives any and all defenses which may be available to contest, negate, or disaffirm any action of by the holder of this special power of attorney taken in good faith under this special power of attorney.

8.3 Allocation and Payment of Rents and Expenses under Grazing Lease. All rents and other sums paid under a Grazing Lease shall be allocated, pro-rated and paid to the Leasing Owners subject to the subject Grazing Lease on a proportionate basis. The proportion of the rents and other sums paid or payable under a Grazing Lease that will be paid to each Leasing Owner shall be equal to the percentage determined by dividing the acreage of each such Leasing Owner's Lot that is subject to the subject Grazing Lease by the total acreage subject to the subject Grazing Lease. All costs and expenses incurred by or on behalf of the lessor under a Grazing Lease shall

be shared and paid by all Leasing Owners subject to the subject Grazing Lease on the same proportionate basis as rents and other sums paid under such Grazing Lease are shared by and paid to such Leasing Owners.

8.4 Termination Right of Each Leasing Owner. At any time after an Owner either has executed and delivered to the Association a Leasing Appointment pursuant to this Article 8 or has accepted a payment for such Owner's pro-rata share of any rental payment made under a Grazing Lease, the subject Owner may terminate the Grazing Lease in effect and covering such Owner's Lot as to all or any designated portion of such Owner's Lot by giving thirty (30) days prior written notice of termination to the Association and the lessee under the subject Grazing Lease. In the event any Owner terminates a Grazing Lease as to all or any designated portion of the subject Owner's Lot, the Grazing Lease shall terminate as to the portion of the subject Owner's Lot designated in the termination notice given by such Owner. If an Owner terminates a Grazing Lease as to only a portion of such Owner's Lot, the rent allocable and payable to the terminating Owner under the subject Grazing Lease shall be reduced and pro-rated based on the acreage out of the terminating Owner's Lot which remains subject to the Grazing Lease. Upon termination by an Owner of a Grazing Lease as to any portion of the Owner's Lot, the terminating Owner, within thirty (30) days of termination, will construct and install a fence capable of containing and turning cattle around the portion of such Owner's Lot as to which the Grazing Lease is terminated and will thereafter maintain such fence in good condition and repair.

8.5 Powers, Rights, and Duties of Association. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have and perform each of the following duties, and shall have the following rights and powers, with respect to each Grazing Lease executed by the Association pursuant to the provisions of this Article 8:

- (a) To manage, administer, supervise and otherwise perform and oversee the duties, obligations and responsibilities of the lessor under each Grazing Lease;
- (b) To exercise the rights and privileges of the lessor under each Grazing Lease;
- (c) To collect, receive, and demand all rents and other sums payable to the lessor or lessors under the subject Grazing Lease.
- (d) To disburse to each Grazing Lease Owner the portion of the rents and other sums payable to the lessor or lessors under the subject Grazing Lease payable or otherwise allocable to each Grazing Lease Owner which is a party to the subject Grazing Lease;
- (e) To do such acts, take part in any proceedings, and exercise all rights and privileges as could the lessor under any Grazing Lease, subject to the limitations expressly stated in this Article 8 and to take or do such other action and perform such other acts as the Association, in its discretion, deems necessary, convenient or advisable in carrying out its duties, obligations, rights and powers under this Article 8; and

(f) to use reasonable efforts to cause the lessor to perform its obligations under all Grazing Leases;

8.6 Level of Duty and Limitation of Duties of Association. The Association will exercise and/or perform its powers, rights and duties under this Article 8 with the degree of degree care, and to the same standards, that are imposed on the Association in exercising and/or performing its other powers, rights and duties under this Declaration. The Association shall be obligated to perform the duties, responsibilities and obligations of the Association hereunder only to the extent that funds are available therefor. Notwithstanding any other provision hereof, the Association shall be liable only for bad faith, willful misconduct, gross negligence, breach of fiduciary duty or breach of an express provision of this Agreement, but in other respects shall not be liable for a mistake in judgment.

8.7 Reimbursement of Association. The Association shall be entitled to reimbursement by the Grazing Lease Owners for all expenses, fees and costs incurred by the Association in connection with the performance of the Association's duties and obligations under this Article 8 and the exercise, enforcement and enjoyment of the rights and powers of the Association under this Article 8. The liability of any Grazing Lease Owner to reimburse the Association under this Section shall be proportionate to the percentage of the rent payable to the subject Grazing Lease Owner under the Grazing Lease covering the subject Grazing Lease Owner's Lot.

2. Defined Terms. Words and terms used in this Amendment which are defined in the Declaration are used in this Amendment as defined in the Declaration, except as specifically otherwise provided in this Amendment.

3. Preservation of Declaration. Except as specifically amended and modified by this Amendment, all the terms, provisions, covenants, conditions and restrictions set forth in the Declaration shall remain in full force and effect as provided in the Declaration. All terms, provisions, covenants, conditions and restrictions of the Declaration, as amended and modified by the instrument, are ratified, confirmed and reaffirmed by Declarant. Except as otherwise expressly provided in this Amendment, Declarant does not intend to, and the execution of this Declaration shall not, in any manner impair, waive or release any of the terms, provisions, covenants, conditions and restrictions of the Declaration. In no event does Declarant intend, by executing and recording this Amendment, to materially affect the obligations of the Association to operate, maintain, repair and improve, or to levy Assessments for the operation, maintenance, repair and improvement of, the Private Streets. The purpose of this Amendment is to amend the Declaration as provided above and to ratify, confirm and reaffirm all terms, provisions, covenants, conditions and restrictions set forth in the Declaration, as modified and amended by this Amendment.

4. Governing Law. This Amendment shall be construed and governed under the laws of the State of Texas.

This Amendment is executed effective as of the date this Amendment is recorded in the Real Property Records of Hays County, Texas.

DECLARANT:

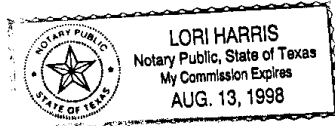
FARM CREDIT BANK OF TEXAS

By: *Dennis L. Raesener*Printed Name: DENNIS L. RAESENERTitle: VICE PRESIDENT

STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me on the 14 day of April, 1998, by Dennis Raesener, the Vice President of FARM CREDIT BANK OF TEXAS, a banking corporation chartered under the Farm Credit Act of 1971 (Public Law 92-181), as amended, on behalf of said banking corporation.



Lori Harris
Notary Public for the State of Texas

Printed Name of Notary

My Commission Expires: _____

EXHIBIT B

ACKNOWLEDGMENT AND APPOINTMENT OF
SPECIAL POWER OF ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF HAYS §

KNOW ALL MEN BY THESE PRESENTS:

THIS ACKNOWLEDGMENT AND APPOINTMENT OF SPECIAL POWER OF
ATTORNEY (this "Acknowledgment") is executed by

("Owner," whether one or more) as of the ____ day of _____, 1998, as follows:

RECITALS

A. Owner is the owner of Lot ____ (the "Lot"), in Indian Hills Ranch, a subdivision in Hays County, Texas according to the plat of record at Plat Book 6, Pages 339-344 of the Plat Records of Hays County, Texas (the "Subdivision").

B. All of the lots in the Subdivision are subject to the covenants, conditions, restrictions, terms and provisions of that certain Declaration of Covenants, Conditions and Restrictions for Indian Hills Ranch (the "Original Declaration"), executed by Farm Credit Bank of Texas ("Declarant") and recorded at Volume 1156, Page 383 of the Real Property Records of Hays County, Texas, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Indian Hills Ranch executed by Declarant and recorded in the Real Property Records of Hays County, Texas (the "First Amendment"), and that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for Indian Hills Ranch executed by Declarant and recorded in the Real Property Records of Hays County, Texas (the "Second Amendment," the Original Declaration as amended by the First Amendment and the Second Amendment, the "Declaration")

C. Pursuant to the provisions of Article 8 of the Declaration, each owner of a lot in the Subdivision may elect to appoint Indian Hills Ranch Owners Association, Inc. (the "Association"), the homeowners association organized and designated under the Declaration, as such owner's true and lawful attorney in fact and agent for the purposes set forth in Article 8 of the Declaration.

NOW, THEREFORE, for and in consideration of the above stated recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner does hereby acknowledge, confirm, affirm and ratify that Owner, on and subject to the terms and conditions of Article 8 of the Declaration, has irrevocably constituted and appointed Declarant as Owner's true and lawful attorney-in-fact and agent for the purposes set forth in Article 8 of the Declaration and to have, hold, exercise and enjoy the rights, authority and powers provided for the Association as such agent and attorney-in-fact under the provisions of Article 8 of the Declaration.

Any person dealing with Declarant with respect to the power and authorization provided in Article 8 of the Declaration and ratified and confirmed by this Acknowledgment shall be fully protected in treating this power of attorney as continuing in full force and effect and in acting and relying on any certificate of Declarant that this power of attorney is in full force and effect.

EXECUTED this ____ day of _____, 1998.

OWNER:

Printed Name: _____

AFTER RECORDING RETURN TO:

Stephen A. Mitchell
Kuperman, Orr, Mouer & Albers, P.C.
100 Congress Avenue, Suite 1400
Austin, Texas 78701-4042

Printed Name: _____

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

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Margie T Villalpando

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MARGIE T VILLALPANDO, County Clerk
HAYS COUNTY