

REVISED COVENANT, CONDITION AND RESTRICTION AGREEMENT**Preamble**

This Revised Covenant, Condition and Restriction Agreement is made on October 21, 1998, by and between ARK RESOURCES, L.L.C., a Texas Limited Liability Company ("Ark"), JAMES A. JOHNSON and DANA L. JOHNSON (collectively referred to herein as "**Johnson**"), JEFF MORRIS and CHERYL MORRIS (collectively referred to herein as "**Morris**"), OLIVER HOLLENSHEAD and JANIS HOLLENSHEAD (collectively referred to herein as "**Hollenshead**") and WAYNE GIFFORD and SUSIE GIFFORD (collectively referred to herein as "**Gifford**"), all of which parties are sometimes collectively referred to herein as the "**Declarants**". All other owners of any of the property described herein (the "**Additional Owners**") acknowledge their consent to this Revised Covenant, Condition and Restriction Agreement as evidenced by the signatures hereon.

Recitals

1. Declarants and the Additional Owners are the owners of all that certain real property located in Cherokee County, Texas, containing 1081.94 acres of land (more or less) and being more particularly described on what is attached hereto as Exhibit "A" and incorporated herein by reference. Altogether the Property constitutes an agricultural "neighborhood" or "community".

2. Declarants desire to preserve the Property's rural and agricultural character. To this end, Declarants provide for these Covenants, a common plan designed to protect and safeguard the character of the Property over a long period. The original of these Covenants was executed July 27, 1998 and is recorded in Volume 1394, Page 248 of the Official Land Records of Cherokee County, Texas. These Revised Covenants amend and replace the original Covenants in their entirety.

3. These Covenants will benefit the Property in general, the parcels and lots that constitute the Property, Declarants, and each successive owner of any fee simple interest in all or any part of the Property.

4. Therefore, in accordance with both the doctrines of restrictive covenants and implied equitable servitude, Declarants desire to restrict the Property according to these covenants, conditions, and restrictions.

NOW, THEREFORE, in consideration of the mutual benefits and protections afforded by these Covenants, Declarants hereby declare that all of the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions.

ARTICLE 1

Definitions

The following terms, words or phrases used in these Covenants shall, when capitalized, have the following meanings:

1.01. "Additional Property" means all or any part of the real property described on what is attached hereto as Exhibit "B" and incorporated herein by reference, purchased by Ark at any time on or before June 30, 2008, which real property is made the subject of a Right of First Refusal described in that certain Real Estate Sales Contract dated July 1, 1998, by and between Eugene Wilton Thrash, et al. as Seller and James A. Johnson, Trustee as Buyer.

1.02. "Agricultural Purposes" means farming, ranching, horse raising, poultry operations, nursery operations, growing and/or harvesting timber, producing and/or harvesting aquatic products, hunting and fishing. Provided, however, that the following activities are not included in this definition of Agricultural Purposes and are specifically prohibited activities:

1. Feed lot operations for cattle, pigs, sheep or goats;
2. Commercial pig raising operations;
3. Leasing or renting the use of any part of the Property for hunting or fishing purposes to any Person who is not an Owner;
4. Dairy operations which include more than six (6) milking cows at any one time.

1.03. "Ark" means Ark Resources, L.L.C., a Texas limited liability company and its successors and assigns.

1.04. "Covenants" shall mean this Covenant, Condition and Restriction Agreement, as such agreement may from time to time be amended or supplemented.

1.05. "Environmental Laws" means all environmental laws and regulations of the United States, the State of Texas, and any local authority relating to the protection of human health or the environment including, but not limited to, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et seq), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601, et seq), the Federal Water Pollution Control Act (33 U.S.C. §§1251 et seq.), the Clean Air Act (42 U.S.C. §§741 et seq), the Clean Water Act (33 U.S.C. §7401 et seq), the Toxic Substances Control Act (15 U.S.C. §§2601-2629), the Safe Drinking Water Act (42 U.S.C. §§300f-300j), the United States Environmental Protection Agency's Rules concerning Underground Storage Tanks (52 Fed. Reg. 12261), the Texas Solid Waste Disposal Act, the Texas Water Code, and the Texas Clean Air Act, and any federal or state rules or regulations which implement such legislation, and all similar federal, state and local environmental statutes and ordinances and the regulations, orders and decrees now or hereafter promulgated thereunder.

1.06. "Family" means a) a single person and his or her children (if any), b) a married couple and his or her children (if any), and c) two (2) or more persons who are related to each other within the third degree of consanguinity or affinity, as determined under Sections 573.022 and 573.024 of the Texas Government Code (as such Code may from time to time be amended). For this purpose, adopted children and foster children are considered a part of the Family, notwithstanding their biological relationship (or lack thereof) by consanguinity or affinity.

1.07. "Hazardous Substances" means and includes, without limitation, asbestos and any substance containing asbestos, the group of organic compounds known as polychlorinated biphenyls, flammable products, explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, petroleum and other liquid hydrocarbons and any fractions thereof, and any other substance defined as a "hazardous substance" under any of the Environmental Laws.

1.08. "Mortgage" means a voluntary mortgage or pledge of a Tract to any Person, including but not limited to a federally or state chartered bank, savings bank, savings and loan, farm credit system institution or real estate investment trust. "Mortgage" does not include, however, involuntary liens or claims such as judgment liens, federal tax liens, attachment liens or state tax liens.

1.09. "Mineral Purposes" means leasing, conveying, transferring, developing or using all or any part of the Property for the exploration, production and/or transporting of oil, gas and other liquid or non-liquid hydrocarbons. Provided, however, that removing, mining or strip mining coal, lignite, sand, gravel, iron and other forms of ore is not authorized as, or included in, "Mineral Purposes".

1.10. "Owner" means the record owner or owners of the fee simple title to any Tract or other part of the Property, including but not limited to Johnson, Gifford, Morris, Hollenshead, Ark and any other Person owning or acquiring all or any part of the Property, together with their respective heirs, administrators, successors and assigns. The term "Owner" excludes any Person having an interest in a Tract merely as security for the performance of an obligation; however, in the event such a Person acquires fee simple title to such Tract by foreclosure, receivership, conveyance or judicial process, such Person shall, at the time of such acquisition, be an "Owner."

1.11. "Person" shall mean and refer to an individual, corporation, partnership, association, trust, limited liability company, or other legal entity or any combination thereof.

1.12. "Property" means a) all that certain real property containing 1081.94 acres of land, more or less, located in Cherokee County, Texas and being more particularly described on what is attached hereto as Exhibit "A" and incorporated herein by reference, and b) such part of the Additional Property if, as and when same is purchased or otherwise acquired by Ark.

1.13. "Reserved Land" shall mean such part or parts of the Property, together with all buildings, equipment, structures and improvements thereon, if any, as may be owned now or at any time hereafter by Ark.

1.14. "Residential Purposes" shall mean the use of a Tract for a residence. Provided, however, that the following uses are not permitted as a "Residential Purpose":

1. Use of a Tract by more than two (2) Families as a residence;
2. Constructing multiple family housing structures such as duplexes, triplexes, quadraplexes or any multiunit structure; or
3. Subdividing the Tract into smaller tracts than are otherwise permitted by these Covenants.

1.15. "Tract" means any part of the Property.

ARTICLE 2

Use and Maintenance Restrictions

2.01. Agricultural and Residential Use. The Property, and any part thereof, shall be used for Residential, Agricultural and Mineral Purposes only.

2.02. Type of Buildings. No building shall be erected, altered, or permitted on any Tract other than single-family dwellings and any barns, greenhouses, corrals, outbuildings, cellars, shelters or other buildings reasonably necessary to allow the Owner to use the Tract for Agricultural, Residential and Mineral Purposes.

2.03. Setbacks. No building shall be located on any Tract nearer to any Tract line than fifty (50) feet.

2.04. Division of Tracts. No Tract, once purchased by an Owner (excluding Ark), shall be divided or split to create a single Tract which is less than fifteen (15) contiguous acres of land. In addition, for each original Tract purchased from Ark such Tract shall not be subdivided or split into more than the following number of smaller Tracts, all of which smaller Tracts must be at least fifteen (15) contiguous acres of land:

1. If the original Tract is fifteen (15) to thirty (30) acres, such Tract shall not be divided or split;
2. If the original Tract is more than thirty (30) acres, but less than fifty (50) acres,

such Tract shall not be divided or split into more than two (2) smaller Tracts;

3. If the original Tract is at least fifty (50) acres, but less than seventy-five (75) acres, such Tract shall not be divided or split into more than three (3) smaller Tracts;
4. If the original Tract is at least seventy-five (75) acres, but less than one hundred (100) acres, such Tract shall not be divided or split into more than four (4) smaller Tracts; and
5. If the original Tract is at least one hundred (100) acres, such Tract shall not be divided or split into more than five (5) smaller Tracts.

Size limitations do not apply to property owned by Ark. Moreover, any Tract sold or transferred by Ark which is less than fifteen (15) contiguous acres of land is excluded from the minimum Tract size, but may not be subdivided or split into smaller Tracts by the Owner or any subsequent Owner. Nothing herein shall prevent Owners from granting easements or rights of way otherwise permitted by these Covenants, or from transferring nominal portions of a Tract to resolve boundary line disputes or encroachments.

2.05. Noxious or Offensive Activities Prohibited. No noxious or offensive activity shall be conducted on any Tract that may be or may become an annoyance or nuisance to the Owner of any other part of the Property. Noxious or offensive activities include, but are not limited to, wrecked automobile storage, junk yards, any activity violating any Environmental Law and storing, discharging or releasing any Hazardous Substance (other than the storage of oil, gas and any other liquid or non-liquid hydrocarbon).

2.06. Signs. No signs (other than "No Trespassing", "No Hunting" and/or "No Fishing" signs) shall be allowed on or within fifty (50) feet of any exterior boundary line of the Property.

2.07. Garbage, Refuse and Trash. All garbage, refuse, trash and other waste shall be kept and/or disposed of in sanitary fashion and in accordance with the laws of the State of Texas and all Environmental Laws.

2.08. Greenbelt Area. The area of any Tract adjoining the northern boundary of the Property or otherwise adjacent to County Road 4914 (or such other designation or number hereafter given to such road) shall be a "Greenbelt Area" extending from such northern boundary inward for a distance of seventy (70) feet. Timber within the Greenbelt Area shall not be clear cut, although culling is permitted. In addition, no building or structure (except a fence or wall, or facilities for utilities or drainage), shall be placed or permitted to remain in the Greenbelt Area. The Owner of any such Greenbelt Area must construct and/or maintain a fence along said County Road 4914 of a type which is at least six (6) feet in height and of a construction that fully obstructs viewing into the Property.

2.09. Land Near Water or Water Courses. No building shall be placed, nor shall any material or refuse be placed or stored, on any Tract within fifty (50) feet of a presently existing tank, pond, lake, creek or open water course on the Property. However, clean fill may be placed in that setback area if the natural water course is not altered or blocked by the fill. In addition, no discharge or release from septic systems, water treatment systems, oil or gas production facilities or dairy cattle operations shall be permitted into any presently existing tank, pond, lake, creek or open water course on the Property.

2.10. Prohibited Activities. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Tract. No Tract (or any part thereof) may be leased or licensed for hunting, fishing or recreational purposes except to other owners.

2.11. Compliance with Laws. No Tract shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Texas or any other governmental agency or authority having jurisdiction over the Property.

ARTICLE THREE

Easements

3.01. Reservation of Easements. Each Tract shall have a limited easement across and through each other part of the Property for the limited purposes of installing, operating, maintaining, repairing, or removing any electrical, water, gas or other utility line reasonably necessary to support the Owner's permitted Agricultural, Residential or Mineral use of the Owner's Tract. Such an easement includes the right of ingress and egress for such purposes, and for removing any debris or other hazard which could potentially disrupt the use of such lines. Provided, however, that each Owner shall use, where reasonably practicable to do so, any existing lines.

ARTICLE FOUR

Right of First Refusal

4.01. Right of First Refusal. Ark shall have a right of first refusal on any Tract sold, leased or otherwise conveyed by an Owner before July 31, 2019. The following events are excluded from Ark's right of first refusal:

1. The transfer of any Tract by inheritance, devise or bequest;
2. The transfer of an undivided interest or community property interest by one Owner to another Owner of an undivided interest or community property interest in such Tract; or

3. The transfer of any Tract by judicial or non-judicial foreclosure initiated by the owner and holder of a Mortgage. Any such foreclosure shall not terminate Ark's right of first refusal on all or a part of the same Tract if, as and when such property is later sold. Provided, however, that if the owner and holder of the Mortgage fails to give Ark at least twenty-one (21) days prior written notice of the date, time and place of any such scheduled foreclosure sale, Ark shall have the right to purchase the foreclosed Tract, for the same amount paid at foreclosure plus interest at six percent (6%) per annum, at any time within sixty (60) days after Ark receives actual notice of the foreclosure sale.

The right of first refusal shall apply as to each succeeding Owner; Ark's failure or refusal to exercise the right of first refusal on one (1) or more occasions as to a part of the Property, shall not waive, relinquish or release its right of first refusal as to the same or any other Tract to be sold, transferred or conveyed at a later time.

4.02. Exercise of Right of First Refusal. If an Owner receives from a third party, at any time during the term of the right of first refusal, a bona fide offer to purchase or lease all or any part of a Tract and decides to sell or lease such Property for the amount named in the offer, Owner shall promptly give written notice to Ark of the terms of the offer and Owner's willingness to sell or lease for the price offered. Upon receiving the notice, Ark shall have the option and privilege of purchasing or leasing the Property (or the part thereof) at the stated price, and must notify Owner in writing within forty-five (45) days after the date Ark receives notice from Owner whether it will purchase or lease the Property (or the part thereof) for the amount and on the same terms specified in the offer. The closing on the sale or lease of the Property (or the part thereof) to Ark shall not close any sooner than thirty (30) days after the date Ark notifies Owner of the exercise of this right of first refusal. If Ark elects not to purchase or lease (as the case may be) the Property (or the part thereof) within the specified forty-five (45) day period, at the price specified by the third party's offer, Owner may then sell or lease such Property to the offering party. If for any reason the Property, or any part thereof, is not sold or leased to such party, notice of any subsequent bona fide offers acceptable to Owner must be given to Ark upon the same terms of acceptance or refusal as these Covenants provide.

ARTICLE FIVE

General Provisions

5.01. Enforcement. Ark, and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by these Covenants. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.

5.02. Severability. Invalidation of any one of these covenants or restrictions by

judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

5.03. Covenants Running With the Land. These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the Property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Tract, and each Owner.


5.04. Duration and Amendment. The covenants, conditions, and restrictions of these Covenants shall be effective until July 31, 2019, after which period the covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each subject to termination by an instrument signed by the Owners owning more than fifty (50%) percent of the total acreage of the Property. The covenants, conditions, and restrictions of these Covenants may be amended or terminated by an instrument signed by the Owners of more than seventy-five percent (75%) of the total acreage of the Property. Neither any amendment nor any termination shall be effective until recorded in the Official Public Records of Cherokee County, Texas, and all requisite governmental approvals, if any, have been obtained.

5.05. Attorneys' Fees. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

5.06. Liberal Interpretation. These Covenants shall be liberally construed to effectuate their purpose.

These Covenants are executed this 21st day of October, 1998, at Tyler, Smith County, Texas.

ARK RESOURCES, L.L.C., a Texas Limited Liability Company

BY: 
NAME: JAMES A. JOHNSON
TITLE: MEMBER

BY: 
NAME: JEFF MORRIS
TITLE: MEMBER

BY:  member