

**Declaration of Restrictive Covenants
of the
Summit Orchards Subdivision**

Date: April 13th, 2022

Declarant: HP Land Development, LLC, a Texas limited liability company

Declarant's Address:
141 Danube, Suite 102
San Antonio, Texas 78213

Property Owners Association: Summit Orchards Property Owners Association, Inc., a Texas nonprofit corporation

Property Owners Association's Address: 141 Danube, Suite 102, San Antonio, Texas 78213

Property: 200 Acres, more or less, located in Frio County, Texas, more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes.

Definitions

"ACC" means the Architectural Control Committee established in this Declaration.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Board" means the Board of Directors of the Property Owners Association.

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot of the Property and that has not been accepted for maintenance by the applicable governmental body. Declarant conveys the Common Area to the Property Owners Association.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means HP Land Development, LLC, a Texas limited liability company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Dedictory Instruments" means this Declaration and the certificate of formation,

Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

"Easements" means Easements within the Property for utilities, drainage, and other purposes as shown of record.

"Lot" means each tract of land designated as a lot of the Property, excluding lots that are part of the Common Area.

"Member" means Owner.

"Owner" means every record Owner of a fee interest in a Lot.

"Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Short Term Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration for a period of time less than Five (5) days.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Structure" means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property acreage and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

Clauses and Covenants

A. Imposition of Covenants

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

B. Easements

1. The Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

C. Use and Activities

1. *Permitted Use.* A Lot may be used only for residential purposes with approved structures or activities that are not commercial in nature.

2. *Prohibited Activities.* Prohibited activities are -

a. any activity that is otherwise prohibited by the Dedicatory Instruments;
and,

b. any illegal activity;

D. Construction and Maintenance Standards

1. Only a maximum of two (2) residential structures and/or mobile or manufactured homes per Property Lot. Manufactured home manufactured date must be no older than five (5) years at the time of placement on the Property.

2. No single-wide mobile home or single-wide manufactured home is permitted on the Property.

3. Skirting must be installed around a manufactured home within sixty (60) days after the manufactured home is placed on the Lot.

4. Each improvement for a residence must be at least fifty (50) feet from any internal or external Property boundary line.

5. Property owners with land along a private road, or easement for ingress and egress, may not construct a fence or gate, or encroach in any manner, the road or easement. All fencing must be along the easement boundary line.

6. All areas within fifty (50) feet of any Property line must be kept free of all trash, debris, equipment, structures, deer blinds, feeders, and parked or immobile vehicles.

7. The Property may not be further subdivided in any manner from the originally subdivided lots indicated on the Property.

8. Any Residence or Structure that is damaged must be repaired within ninety (90) days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within one hundred eight (180) days and the Lot restored to a clean and attractive condition.

E. Property Owners Association

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one (1) vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one (1) vote may be cast for a Lot.

b. *Class B.* The Class B Member is Declarant and has three (3) number of votes for each Lot owned specified in the Bylaws. The Class B Membership ceases and converts to Class A Membership on the earlier of –

i. when the Class A Members' votes exceed the total of Class B Member's votes; or,

- ii. when all Lots are sold by the Developer/Declarant.

F. ACC

1. *Establishment*

- a. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.
- b. *Members.* The ACC consists of at least three (3) persons appointed by the Board. The Board may remove or replace an ACC member at any time.
- c. *Term.* ACC members serve until replaced by the Board or they resign.
- d. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.
- e. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

G. Assessments

- 1. *Authority.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas.
- 2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.
- 3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.
- 4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.
- 5. *Regular Assessments*

a. *Rate.* Regular Assessments are levied annually by the Board to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is \$150.00.

b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.

c. *Collections.* Regular Assessments will be collected yearly in advance, payable on the first day of March of each year or prorated for the remainder of the year of purchase.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefitting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a majority of the Members vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within sixty (60) days after it is due is delinquent.

H. Remedial Rights

1. *Late Charges and Interest.* A late charge of an amount to be determine is assessed for delinquent payments. The Board may change the late charge and any interest rate charged.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action

against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.

5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

6. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

I. Common Area

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to -

- a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
- b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments;
- c. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
- d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of majority of the Members of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

J. General Provisions

1. *Term.* This Declaration runs with the land and is binding in perpetuity.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by vote of 67 percent of Owners entitled to vote on the amendment. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

8. *Annexation of Additional Property.* On written approval of the Board and not less than sixty-seven percent (67%) of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

HP Land Development, LLC, a Texas limited liability company

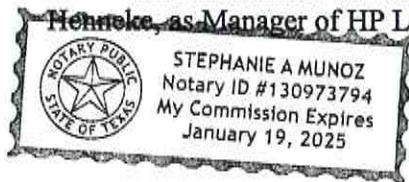


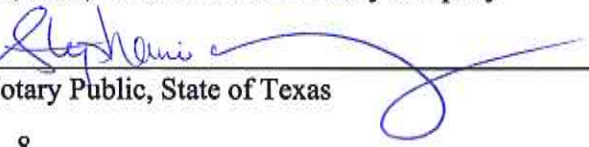
Scott Henneke, Manager

STATE OF TEXAS)

COUNTY OF BEXAR)

This instrument was acknowledged before me on 4/13, 2022, by Scott Henneke, as Manager of HP Land Development, LLC, a Texas limited liability company.





Notary Public, State of Texas

After recording, please return to:
HP Land Development, LLC
141 Danube, Suite 102
San Antonio, Texas 78213

0010

Exhibit "A"

THE STATE OF TEXAS
COUNTY OF FRIO

PREPARED FOR: Ralph E. Niehaus

FIELD NOTES TO DESCRIBE

A survey of 200.115 acres of land situated about 14 miles N 44° E of Pearsall, in Frio County, Texas, out of Survey No. 105, Abstract No. 198, Henry Castro, original Grantee, being that same property described in a Deed to Ralph E. Niehaus and Althea M. Niehaus, Trustees from Ralph E. Niehaus, et ux, dated August 3, 1999, as recorded in Volume 930 on Page 340 of the Deed Records of Frio County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING: At a railroad spike found in fence on the South line of that certain 160 acre tract of land described as First Tract in a Deed to Victor E. Baldrige, Jr., et ux from Barbara Driscoll Schmenner, dated December 5, 2014, as recorded in Volume 172 on Page 151 of the Official Public Records of Frio County, Texas, for the Northeast corner of that certain 100.0 acres of land, more or less, described in a Deed to Jimmy J. Prue, et al from Clay Michael Tooke, Trustee, dated September 21, 2006, as recorded in Volume 25 on Page 630 of the aforementioned Official Public Records, and the Northwest corner of this survey from which the recognized Northwest corner of said Survey No. 105 bears N 70-55-31 W 175.88 feet;

THENCE: Generally along fence and the South line of said 160 acre tract of land, S 85-09-06 E at 40.75 feet pass a 2" diameter pipe corner post, continuing a total distance of 2470.69 feet to an 8" diameter creosote corner post on the upper West line of that certain 325.56 acre tract of land described in a Deed to David L. Calame, et ux, et al from Thelma H. Gutierrez, dated February 26, 1996, as recorded in Volume 869 on Page 384 of the aforementioned Deed Records, for the Southeast corner of said 160 acre tract of land, and the upper Northeast corner of this survey;

THENCE: Generally along fence and the upper West line of said 325.56 acre tract of land, S 06-25-18 W 2127.55 feet to a railroad tie corner post for the upper Southwest corner of said 325.56 acre tract of land, and an interior corner of this survey;

THENCE: Generally along fence and the upper South line of said 325.56 acre tract of land, N 89-11-52 E 38.99 feet to a railroad tie corner post on the recognized East line of said Survey No. 105 and the recognized West line of Survey No. 106, Abstract No. 197, Henry Castro, original Grantee, for an interior corner of said 325.56 acre tract of land, and the lower Northeast corner of this survey;

THENCE: Generally along fence, the recognized East line of said Survey No. 105, the recognized West line of said Survey No. 106, and the lower West line of said 325.56 acre tract of land, S 06-50-27 W 1398.36 feet to a 5/8" iron pin found by a 4" diameter cedar corner post for the Northeast corner of that certain 100 acres of land, more or less, described as Tract 1 in a Deed to Ronald G. Brookfield from Fernando Serna, Jr., et ux, dated March 31, 2008, as recorded in Volume 46 on Page 246 of the said Official Public Records, and the Southeast corner of this survey;

THENCE: Generally along fence and the North line of said 100 acres of land, more or less, N 85-05-40 W at 2465.31 feet pass a 2" diameter piper corner post, continuing generally along fence, a total distance of 2485.09 feet to a 4" diameter pipe corner post on the East line of said Prue 100.0 acres of land, more or less, for the Northwest corner of said Brookfield 100.0 acres of land, more or less, and the Southwest corner of this survey;

THENCE: Generally along fence and the East line of said Prue 100.0 acres of land, more or less, N 06-11-37 E 3518.91 feet to the POINT OF BEGINNING.

The bearings are relative to Geodetic North WGS 84 as taken from GPS Observations.

I certify that the foregoing field note description was prepared from an actual survey made under my supervision on the ground and that same is true and correct. Witness my hand and seal this the 13th day of May, 2021.



Jonathan H. Rothe
Registered Professional Land Surveyor No. 6286
1705 Avenue K, P.O. Box 426
Hondo, Texas 78861
Ph. (830) 426-3005



Exhibit B

EXHIBIT "B"
TO PARTNERSHIP DEED

Road Easement

Begin at a fence corner post located at the southeast corner of a public road and being 17.3 feet $S04^{\circ}25'W$ from the original northwest corner of the Henry Castro Survey 102, Abst. 227, Frio County, Texas;

Thence with fence, the north line of a 217.69 acre tract and a 100.0 acre tract $S37^{\circ}09'E$ 2243.0 feet to a fence corner post;

Thence $S03^{\circ}07'W$ 24.0 feet to a fence corner post and turn;

Thence along fence $S86^{\circ}53'E$ 567.4 feet to an iron pin set for the north corner of said 200.0 acre tract;

Thence with the west line said 200.0 acre tract $S04^{\circ}25'W$ 30.0 feet to a stake;

Thence $N86^{\circ}53'W$ 596.75 feet to a stake;

Thence $N03^{\circ}07'E$ 23.65 feet to a stake;

Thence $N87^{\circ}09'W$ 2388.0 feet to a stake in fence;

Thence $N03^{\circ}31'E$ with fence, 30.0 feet to a fence corner post for the most northwest corner of said 217.69 acre tract;

Thence along fence and crossing the south line of said public road, $S67^{\circ}09'E$ 175.0 feet to the place of beginning.

FILED FOR RECORD
AARON T. IBARRA - COUNTY CLERK

FRIO COUNTY, TEXAS

INST NO: 0163404

FILED ON: APRIL 19, 2022 AT 02:50pm

THIS INSTRUMENT CONTAINED 14 PAGES AT FILING



THE STATE OF TEXAS COUNTY OF FRIO
I hereby certify that this instrument was filed on the date and
time stamped hereon and recorded in the volume and page
of named record of Frio County, and stamped hereon by me.
DATE: APRIL 19, 2022
AARON T. IBARRA, COUNTY CLERK

A handwritten signature in black ink, appearing to be "A. Ibarra", is written over a solid horizontal line.

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OPR RECORDS