

**Declaration of Restrictive Covenants of the
Encino Crossing
An Unrecorded Subdivision**

Basic Information

Date: _____

Declarant: Dendro Holdings, LLC, a Texas limited liability company

Declarant's Address:

Dendro Holdings, LLC
P.O. Box 6309
San Antonio, Texas 78209

Property Owners Association: Encino Crossing Medina County POA, a Texas nonprofit corporation (doing business as Encino Crossing POA).

Property Owners Association's Address: P.O. Box 6309
San Antonio, Texas 78209

Property:

Tract 1:

188.71 Acre Tract of land, more or less, about 22.4 miles S 67° E of Hondo, in Medina County, Texas, being out of Survey No. 518-3/4, Abstract No. 382, Nepomucino Flores, original grantee, also out of a 275 Acre Tract conveyed from Eddie W. Spalten Family Limited Partnership to James R. Lowe by deed dated May 22, 2002, and recorded in Volume 444, Page 972 of the Official Public Records of Medina County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Tract 2:

140.22 Acre Tract of land, more or less, about 22.4 miles S 67° E of Hondo, in Medina County, Texas, being out of Survey No. 518-3/4, Abstract No. 382, Nepomucino Flores, original grantee, also out of a 224.92 Acre Tract conveyed from Eddie W. Spalten Family Limited Partnership to James R. Lowe by deed dated May 22, 2002, and recorded in Volume 444, Page 967 of the Official Public Records of Medina County, Texas, and being more particularly described by metes and bounds in Exhibit "B" attached hereto and incorporated herein by reference 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 on the Plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Property Owners Association.

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

"Control Transfer Date" means the date Declarant no longer owns or has any legal or equitable interest in any of the Property. As long as Declarant is the beneficiary of any deed or trust or vendor's lien against any of the Property Declarant has an equitable interest in a portion of the Property.

"Declarant" means Dendro Holdings, 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 on the Plat or of record.

"Lot" means each tract of land designated by metes and bounds and described as a Lot within the Subdivision, 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.

“Roadway” means the streets and roadways in the Subdivision

"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 30 days and includes transient and vacation usage.

"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 described herein 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. Plat and Easements

1. The Survey, 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 an approved Residence and approved Structures for Single Family residential use and there shall be no renting of a portion of a Residence or Structure;

2. *Prohibited Activities.* Prohibited activities are -

A. All residences constructed on the property must be constructed with new materials. No pre fabricated homes may be moved onto the Property.

B. All residences constructed on the property shall contain at least 1,200 square feet, exclusive of open porches, breezeways, carports and garages. All construction shall be completed with reasonable diligence and exterior construction must be completed within eighteen (18) months after construction is started. No residence shall be occupied unless all exterior construction of the residence is complete.

C. No mobile homes or manufactured houses shall be allowed on the Property.

D. No trade or business of any kind shall be conducted on the Property, save and except for home based business, not open to the public. A trade or business includes Short Term Renting. Farming and ranching is allowed and livestock, except as hereinafter provided, may be raised, bred or kept on the Property. No pigs or hogs, except as hereinafter provided. Chickens or other fowl may be kept on the Property in an amount that is reasonably practicable for personal consumption. All chickens or fowl must be kept in a pen and stored in a manner that is not offensive to neighbors. No commercial feed lots or hog farms are allowed on the Property.

Notwithstanding the above provisions, if the Property is not subdivided then not more than two (2) FFA or 4-H or similar project of a child may be allowed on the property (which projects may include, without limitation, a hog or pig, or chickens) so long as they are kept in a pen. If the Property is subdivided, only one (1) FFA or 4-H or similar project of a child, may be allowed on each tract resulting from such subdivision (which project may include, without limitation, a hog or pig or chickens), so long as the same is not offensive to neighbors and the animals or chickens are kept in a pen.

For the purposes of ranching activities and the raising, breeding and keeping of livestock on the Property, the number of animals permitted on the Property shall be limited to the average stocking rate of native grass pastures in Medina County, Texas. However, if improved grasses are introduced on the Property, then the number of animals permitted shall be limited to the average stocking rate of improved grass pastures in Medina County, Texas.

E. No dirt, sand, rock, gravel, caliche or similar materials may be removed from the Property.

F. No noxious or offensive activity shall be carried on upon the Property. Nor shall anything be done thereon which may be or become a nuisance to the neighborhood.

G. The Property shall not be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. Trash and waste shall not be burned on the Property but shall be removed by the owner using a commercial trash pick-up service or by the owner himself removing the trash or waste from the Property.

H. All residences and other improvements on the Property shall be kept in a good state of repair and condition.

I. All domestic animals shall be contained within the boundaries of the Property or in the control of a responsible individual.

J. No outside, open, or pit type toilet shall be allowed on the Property and all plumbing shall be connected to an approved septic or sewer system. All septic and sewage disposal systems must comply with the requirements, rules and regulations of the appropriate governing agencies.

K. No structure of a temporary character, any tent, shack, garage, barn, unfinished residence, barn, storage container or other outbuilding shall, at any time, be used as a residence or dwelling, either temporarily or permanently. A travel trailer or motor home may be used as temporary living quarters during construction of a new home, for a maximum period of nine (9) months during active construction of the residence. A storage container may temporarily be used during active construction of the residence.

L. No oil well drilling, development or refining, and no mineral quarrying or mining operations of any kind shall be permitted on the Property. No oil well, tank, tunnel, mineral excavation, or shaft shall be permitted on the Property. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained or permitted on the Property.

M. No junk yards, repair yards or wrecking yards shall be located on the Property. Any vehicle in a state of disrepair or which is unlicensed or unregistered that is placed on the Property for more than two (2) weeks shall constitute a "junk yard" except when stored in a garage or building. All vehicles on the Property must have current licenses and registration and be in regular use.

N. No commercial signs of any kind shall be displayed in public view on the Property except for signs advertising that the Property is available for sale. In the latter event, only one sign not more than 10 square feet may be placed on any single parcel of the Property for advertising purposes.

O. The property and improvements thereon shall not be used for any purpose that is in violation of any environmental law.

P. There is imposed a 50 foot (50') setback from all property lines. No Structure, Vehicle, Residence, deer blind, animal feeder or any other item, no matter the size, shape or composition, shall be constructed, placed or parked within the setback area. This setback shall also apply to any re-subdivided lots.

Q. There are no restrictions against hunting or the lawful discharge of firearms other than laws and regulations as dictated by Medina County.

R. There will be no subdivision of a lot without written approval of the Declarant or the AAC.

S. Renting, with the exception of a temporary lease related to a bona fide sale of a Lot, is strictly prohibited. Short Term Renting is strictly prohibited.

D. Construction and Maintenance Standards

1. Lots

a. *Consolidation of Lots.* An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence.

b. *Subdivision Prohibited.* No Lot may be further subdivided.

c. *Easements.* No easement in a Lot may be granted without ACC approval. No lot may be used as a means of access to any other adjoining land. No Owner may use their ownership of a Lot as a means to use the streets and roadways to service land outside of the subdivision.

d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

2. *Residences and Structures*

- a. *Maximum Height.* The maximum height of a Residence is 2 stories.
- b. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least 1200- square feet.
- c. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within 30 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 60 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 vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.
- b. *Class B.* The Class B Member is Declarant and has 3 votes for each Lot owned as 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. January 30, 2024.

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 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.

2. *Plan Review*

- a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, all in the form and detail the ACC may require.
- b. *Procedures*
 - i. *Complete Submission.* Within 21 days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.
 - ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within 14 days after complete submission, the submitted plans and specifications are deemed approved.
- c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within 5 days after the ACC's action. The Board shall determine the appeal within 10 days after timely notice of appeal is given. The determination by the Board is final.

d. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

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 and roadways.

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 \$300.00. Owners of Lots that front a public roadway and who do not use the streets and roadways of the Subdivision may elect to be exempt from any portion of a Regular Assessment or Special Assessment delineated for road construction or maintenance. If an Owner elects or begins to use the Subdivision streets and roadways, this exemption shall immediately cease and the Owner shall be liable for all Regular and Special Assessments.

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 January of each year.

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, roadways 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 2/3 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 14 days after it is due is delinquent.

H. Remedial Rights

1. *Late Charges and Interest.* A late charge of \$50.00 is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of 5 percent per year. The Board may change the late charge and the interest rate.

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 and Roadway

1. *Common Area and Roadway Easements.* Each Owner has an easement in and to the Common Areas and Roadways, 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 Areas, and if an Owner does not pay these fees, the Owner may not use the recreational facilities; provided, however, no fee, other than approved assessments may be charged for the usage of the roadways;
- b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments; provided, however, an Owner's right to use the roadways may not be suspended;
- 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 2/3 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. *Declarant Rights:* Notwithstanding any other provision of this Declaration, Declarant, in Declarant's discretion, may divide or subdivide the Property into one or more areas, record Plats, re-subdivide Lots created by a Plat in such sizes, locations and configurations as Declarant may elect, modify roadways, Common Areas and rights of way, and/or market and develop all or any of the Property. Declarant's rights within the Property include, but are not limited to, the right to

excavate and grade, to alter drainage patterns and facilities, to construct any and all types of Improvements, to install and maintain construction, sales and leasing offices and similar facilities, to maintain construction staging areas, and to post signs incidental to construction, marketing, sales, and leasing anywhere within the Property, including Common Areas.

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

4. *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.

5. *Amendment*

(a) By Declarant. This Declaration may be amended by Declarant until the Control Transfer Date. No amendment by Declarant is effective until a written amendment executed and acknowledged by Declarant is recorded in the Official Public Records of Medina County, Texas.

(b) By Owners. In addition, this Declaration may be amended after the Control Transfer Date by recording a written amendment in the Official Public Records of Mills County executed and acknowledged by at least 67% of the Owners of the Lots.

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

7. *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.

8. *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.

9. *Annexation of Additional Property.* On written approval of the Board and not less than 75 percent 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.

10. *Non-liability.* Declarant will not be liable to the any Owner or any other Person for any loss, damage, or injury arising out of their being in any way connected with the performance of Declarant's duties under this Declaration unless due to the willful misconduct, gross negligence or bad faith of Declarant.

12. *Assignment of Declarant.* Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties 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 duties hereunder. Any assignment by Declarant will be effective only when an instrument executed and acknowledged by Declarant evidencing such assignment is recorded in the Official Public Records of Medina County, Texas.

Dendro Holdings, a Texas limited liability company,

John Ed Stepan, Managing Member

STATE OF TEXAS)

COUNTY OF BURNET)

This instrument was acknowledged before me on _____, 2022, by John Ed Stepan, a Managing Member of Dendro Holdings, on behalf of Dendro Holdings, a limited liability company.

Notary Public, State of Texas

My commission expires: _____

After recording, please return to:
Henson & Rockafellow, PLLC
117 E. Jackson St.
Burnet, TX 78611
Tel: (512) 756-4100
Fax: (512) 756-2900