

# **FIRST AMENDED DECLARATION OF EASEMENT, COVENANTS AND RESTRICTIONS**

**STATE OF TEXAS**

**COUNTY OF ATASCOSA**

THIS FIRST AMENDED DECLARATION OF EASEMENT, COVENANTS, AND RESTRICTIONS is made effective as of the date of recording in the deed records of Atascosa County, Texas (the "Effective Date") by Michael J. Schwarze, Manager, DR Schwarze, LLC, a Texas Limited Liability Company, as successor in interest to Charlotte HWY 97, a series of Brite Organic Blessings, LLC, a Texas series limited liability company, the Declarant.

WHEREAS, the Declarant owns all that certain real property lying and being situated in Atascosa County, Texas, described as follows (the "Property"):

A tract of land containing 131.93 acres, more or less, out of the ANSON G. NEALL Survey No. 266, ABSTRACT NO. 643, Atascosa County, Texas, being all that same property conveyed in Warranty Deed executed by Karl W. Arnold and wife, Ruth A. Arnold, to Mark E. Arnold, Scott E. Arnold, Robert E. Arnold and Karen Arnold, dated February 25, 1977, recorded in Volume 472, Page 177, of the Deed Records of Atascosa County, Texas, and being more particularly described by metes & bounds in Exhibit "A-1" attached hereto and made apart hereof; and

A tract of land containing 3.09 acres, being a portion of the apparent abandoned S.A.U. & G. Railroad, lying in the ANSON G. NEALL SURVEY NO. 266, ABSTRACT NO. 643, Atascosa County, Texas, and being more particularly described by metes & bounds in Exhibit "A-2" attached hereto and made apart hereof; and

WHEREAS, the Declarant owns the Property with the intention of subdividing it into smaller tracts of land;

WHEREAS, the Declarant, for the benefit of current and subsequent owners of the Property or portions thereof, desires to create an access easement and to make certain restrictions, protective covenants, conditions and charges as set forth herein;

NOW, THEREFORE, Declarant, in order to protect the value and desirability of the Property, hereby DECLARES that said Property shall be held, sold and conveyed subject to the following EASEMENTS, RESTRICTIONS, COVENANTS AND CONDITIONS which shall run with the land and shall be binding on all parties having a right, title or interest in or to the Property or any part thereof, and their heirs, successors and assigns, and any deed or deed of



trust which may hereafter be executed, delivered and accepted shall be subject to the terms and conditions contained in this Declaration, regardless of whether or not such terms and conditions are specifically set out in said contract.

## **ARTICLE I**

### **Definitions**

1. "Covenants" means the covenants, conditions, and restrictions contained in this Declaration.
2. "Easements" means Easements within the Property for utilities, drainage, ingress, egress, and other purposes as shown on the Plat or of record and as more particularly described in Article II.2.
3. "Lot" or "Tract" means each tract of land designated as a lot or tract on a Plat or Survey, being smaller than the whole of the Property and also referring to any portion of the Property, as owned by an Owner.
4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any portion of the Property, excluding however, those having any interest therein merely as security for the performance of an obligation.
5. "Subdivision" means the Property and any additional property made subject to this Declaration.
6. "Utility" or "Utilities" shall include but not be limited to, electric, water, wastewater, and internet.
7. "Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

## **ARTICLE II**

### **Easements**

1. The Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.
2. There shall be a forty foot (40') wide Easement which shall run along the interior Lot property line and extend twenty feet (20') into each Lot for the benefit of ingress and egress for the Declarant and each Owner to access their Lot or Tract and for the purposes of providing utilities, ("Easement"). This Easement shall also be an easement and right of way for utility providers for electric distribution lines, consisting of poles made of wood, metal, or other materials, cross arms, static wires, guys, wire circuits, communication



circuits, transformers, metering equipment and all necessary or desirable appurtenances together with the right of ingress and egress over, under, across and upon the Easement and adjacent land, Lots, or Tracts for the purpose of constructing, operating, reconstructing on poles, enlarging, inspecting, patrolling, repairing, maintaining, upgrading and removing said lines, circuits, poles, wires and appurtenances; the right to relocate along the same general direction of said lines, and the right to remove from the Easement all structures, obstructions, trees and parts thereof, using generally accepted vegetation management practices, (whether from the Easement or that could grow into the Easement) which may, in the reasonable judgment of Declarant or utility provider, endanger or interfere with the safe and efficient operation and/or maintenance of said lines, cables, or appurtenances or ingress and egress to, from or along the Easement. Declarant grants unto Electrical Utility (E.U.) and reserves the right for Declarant and Owners to use the Easement subject to said Easement and Right of Way in any way that will not interfere with E.U.'s exercise of the rights hereby granted. However, Owners shall not construct or permit to be constructed any house or other above ground structure on or within the Easement containing Owner's improvements. This Easement is shown on the plat of survey and described by metes and bounds in Exhibit "B".

3. The responsibility and cost for maintenance of the surface of the Easement for ingress and egress shall be equally borne by each Tract or Lot Owner pro rata, 1/13 for each Tract or Lot owned. However, repairs for any damage caused by an Owner, or the guest or agent of the Owner, shall be the sole responsibility of the Owner causing the damage. No structure, temporary or permanent, may be placed, built, erected, or located in or on the Easement.
4. Declarant reserves unto Declarant, its successors, and assigns, a non-exclusive perpetual easement with the right to erect, construct, install and thereafter access and use, operate, inspect, repair, maintain, replace, upgrade, utilities, over and across the Property and all Tracts or Lots comprising the Property.
5. 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.
6. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.
7. Declarant and each Easement holder may install, maintain, and connect to any current or future utilities in the Easements.

### ARTICLE III

#### Restrictions

1. There shall be a thirty foot (30') setback from all property lines on all tracts. No structures, storage of personal property, blinds, or feeders may be place within the setback. However, fences and gates may be erected or placed within the setback.

2. Any use or activity that is illegal or results in a nuisance or annoyance to adjoining Tracts or Owners of any portion of the Property such as, without limitation, any use that omits obnoxious or offensive noises or odors is prohibited.

## ARTICLE IV

### Binding Effect

Covenants Running with the Land. All of the restrictions, covenants and easements set forth herein apply to each and every Tract and shall be covenants running with the land. The Easement and rights are granted unto the E.U, its successors and assigns forever. Declarant binds itself, assigns, Owners, and legal representatives to warrant and forever defend all and singular the above-described easement and rights unto the E.U, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Declarant Not Bound. The Declarant shall not be subject to the restrictions set forth herein.

No Waiver. Failure of the Declarant to enforce this Declaration is not a waiver and Declarant may but has not obligation to enforce this Declaration.

Declarant Not Liable. No person, entity or Owner shall be entitled to maintain a suit in equity against the Declarant for any alleged violations of this Declaration by an Owner.

Partial Invalidity. Invalidation of any covenant or restriction (by court judgment or otherwise) shall not affect, in any way, the validity of all other covenants and restrictions, all of which shall remain in full and effect. Acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions.

Term. These restrictions shall continue in full force and effect for twenty years from the date of execution (the "Initial Term"). During the Initial Term, these restrictions may be amended or modified in the manner specified in this Declaration. Following the expiration of the Initial Term, these restrictions shall be automatically renewed and continue in full force and effect for one additional 10-year term unless otherwise terminated or modified and amended by a vote of a majority of the Owners.

## ARTICLE V

### Amendment

Declarant shall have, in its sole and absolute discretion, the right to modify this Declaration until the time it has sold 100% of the acreage contained in the Property (the "Declarant Modification Period"). Any amendment made during the Declarant Modification Period shall only apply to Tracts sold after the date the amendment is recorded in the real property records of Atascosa County, Texas. Following the Declarant Modification Period, this Declaration



may only be modified by an instrument signed by the Owners holding a minimum of 51% of the acreage contained in the Property. No amendment is effective until recorded in the real property records of Atascosa County, Texas.

## ARTICLE VI

### Enforcement

If an Owner or Owner's heirs, successors or assigns shall violate or attempt violate any provision of this Declaration, it shall be lawful for any Owner to prosecute proceedings at law or in equity against the violator or potential violator to prevent the violation, to correct such violation, to recover damages, to obtain other relief for such violations, or to seek any combination of the forms of relief mentioned. Failure at any given time to enforce this Declaration shall in no event be deemed a waiver of the right to do so thereafter. **NOTHING HEREIN SHALL BE CONSTRUED AS COMPELLING THE DECLARANT TO ENFORCE ANY PROVISION IN THIS DECLARATION, NOR SHALL ANY FAILURE TO ENFORCE ANY OF THESE PROVISIONS BE DEEMED TO BE A WAIVER OF THE RIGHT OF ENFORCEMENT OR PROHIBITION. THE DECLARANT SHALL HAVE NO LIABILITY OR RESPONSIBILITY AT LAW NOR IN EQUITY ON ACCOUNT OF ENFORCEMENT OF, NOR ON ACCOUNT OF THE FAILURE TO ENFORCE, THIS DECLARATION.**

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal this 2<sup>nd</sup> day of February, 2023.

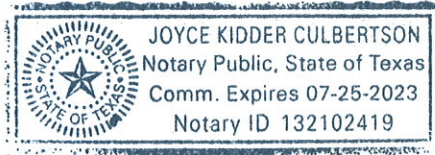
Charlotte HWY 97, a series of Brite Organic Blessings, LLC, a Texas series limited liability company

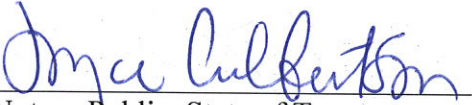
By:   
Michael J. Schwarze, Manager

STATE OF TEXAS  
COUNTY OF COMAL

Before me, Donce Colbertson, on this day personally appeared, Michael J. Schwarze, Manager of Charlotte HWY 97, a series of Brite Organic Blessings, LLC, a Texas series limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 2<sup>nd</sup> day of February, 2023.



  
Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

Charlotte HWY 97  
1531 E. Common Street  
New Braunfels, Texas 78130

# EXHIBIT "A-1"

Michael Schwarze – 20-2137 – 131.93 Acres – Page 1 of 1

State of Texas  
County of Atascosa

Field notes for a tract of land containing 131.93 acres, lying in the Anson G. Neal Survey No. 266, Abstract No. 643, Atascosa County, Texas, as shown on the accompanying Plat of Survey prepared for Michael Schwarze on March 1, 2021.

Field notes for a tract of land containing 131.93 acres, lying in the Anson G. Neal, Survey No. 266, Abstract No. 643, Atascosa County, Texas, and being the same land described as an 131.25 acre tract of land, said tract described in an instrument recorded in Book 472, Page 177 of the Deed Records of Atascosa County, Texas, said tract of land being more particularly described by metes and bounds as follows:

Beginning at a point, marked by a 5/8 steel rod monument with cap stamped Rakowitz Engineering and Surveying, lying Northwest line of the abandoned S.A.U. & G. Rail Road, set at the East corner of said 131.25 acre tract of land and lying on the Southwest line of a 104.50 acre tract of land, described in an instrument recorded in Clerk's File No. 89363 of the Office Public Records of Atascosa County, Texas, said point of beginning being the East corner of this tract of land;

Thence South  $35^{\circ} 15' 04''$  West, 1352.09 feet, along the Northwest line of said abandoned S.A.U. & G Rail Road, being the Southeast line of said 131.25 acre tract of land, to a point marked by a 5/8 steel rod monument with cap stamped Rakowitz Engineering and Surveying, set at the South corner of said 131.25 acre tract of land, being the East corner of a 358.96 acre tract of land tract, described in an instrument recorded as Clerk's File No. 184269 of the Official Public Records of Atascosa County, Texas, said point being the South corner of this tract of land.


Thence North  $54^{\circ} 49' 08''$  West, 4771.85 feet, along the Southwest line of said 131.25 acre tract of land, being the Northeast line of said 358.96 acre tract of land, to a point marked by a 1/2 inch steel rod monument, found at the West corner of said 131.25 acre tract of land, being the North corner of said 358.96 acre tract of land and lying on the Southeast line of County Road 349, said point being the West corner of this tract of land.

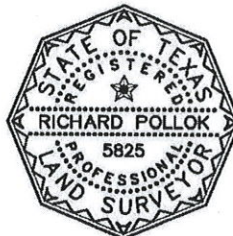
Thence North  $73^{\circ} 20' 19''$  East, 1727.85 feet, along the Northwest line of said 131.25 acre tract of land, being the Southeast line of County Road 349, to a point marked by a 5/8 steel rod monument with cap stamped Rakowitz Engineering and Surveying, set at the North corner of said 131.25 acre tract of land, being the West corner of said 104.50 acre tract of land tract, which bears North  $54^{\circ} 43' 04''$  East, 59.19 feet, from a fence corner post, said point being the North corner of this tract of land.

Thence South  $54^{\circ} 43' 04''$  East, 3706.00 feet, along Northeast line said 131.25 acre tract of land, being the Southwest line of said 104.50 acre tract of land, to point of beginning;

The basis of bearing for this survey is Grid North, Texas State Plane Coordinate System, NAD 83 (2011), South Central Zone.

I, Richard Pollok, being a Registered Professional Land Surveyor, registered in the State of Texas, do hereby certify that the foregoing field notes for a tract of land containing 131.93 acres, as shown on the accompanying Plat of Survey prepared for Michael Schwarze, on March 1, 2021 were prepared from an actual survey done under my supervision and that to the best of my knowledge and belief they are a true and correct representation of said survey.

  
Richard Pollok R.P.L.S. 5825  
Rakowitz Engineering and Surveying  
515 W. Oaklawn Ste. A  
Pleasanton, Texas 78064  
830-281-4060  
Firm No. 10181200





# EXHIBIT "A-2"

Michael Schwarze – 20-2137 – 3.09 Acres – Page 1 of 1

State of Texas  
County of Atascosa

Field notes for a tract of land containing 3.09 acres, being a portion of the apparent abandoned S.A.U. & G. Railroad, lying in the Anson G. Neal Survey No. 266, Abstract No. 643, Atascosa County, Texas, as shown on the accompanying Plat of Survey prepared for Michael Schwarze on April 26, 2021.

Field notes for a tract of land containing 3.09 acres, being a portion of the apparent abandoned S.A.U. & G Railroad, lying in the Anson G. Neal, Survey No. 266, Abstract No. 643, Atascosa County, Texas, said tract of land being more particularly described by metes and bounds as follows:

Beginning at a point, marked by a 5/8 steel rod monument, with cap stamped Rakowitz Engineering and Surveying, found previously set for the East corner of a 131.93 acre tract of land, called 131.25 acre tract of land, described in an instrument, recorded in Book 472, Page 177, Deed Records, Atascosa County, Texas, and being the South corner of a 104.50 acre tract of land, described in an instrument recorded in Clerk's File No. 89363 of the Office Public Records of Atascosa County, Texas, said point of beginning being the North corner of this tract of land;

Thence South  $54^{\circ} 43' 04''$  East, 100.00 feet, across the said apparent abandoned S.A.U. & G. Railroad, to a point marked by a 1/2 inch steel rod monument, found lying on the Northwest right of way of State Highway No. 97, said point being the East corner of this tract of land.


Thence South  $35^{\circ} 16' 46''$  West, 1351.92 feet, along the Northwest right of way of State Highway No. 97, being the Southeast line of said apparent abandoned S.A.U. & G. Railroad, to a point marked by a 5/8 inch steel rod monument, with cap stamped Rakowitz Engineering and Surveying, set on the Northwest right of way of State Highway No. 97, said point being the South corner of this tract of land.

Thence North  $54^{\circ} 49' 08''$  West, 99.33 feet, across the said apparent abandoned S.A.U. & G. Railroad, to a point marked with a 5/8 inch steel rod monument, with cap stamped Rakowitz Engineering and Surveying, found previously set for the South corner of said 131.25 acre tract of land, being the East corner of a 358.96 acre tract of land, described in an instrument, recorded in Clerk's File No. 184269, Official Public Records, Atascosa County, Texas, said point being the West corner of this tract of land.

Thence North  $35^{\circ} 15' 04''$  East, 1352.09 feet, along the Northwest line of said apparent abandoned S.A.U. & G. Railroad, being the Southeast line of said 131.25 acre tract of land, to the point of beginning;

The basis of bearing for this survey is Grid North, Texas State Plane Coordinate System, NAD 83 (2011), South Central Zone.

I, Richard Pollok, being a Registered Professional Land Surveyor, registered in the State of Texas, do hereby certify that the foregoing field notes for a tract of land containing 3.09 acres, as shown on the accompanying Plat of Survey prepared for Michael Schwarze, on March 1, 2021 were prepared from an actual survey done under my supervision and that to the best of my knowledge and belief they are a true and correct representation of said survey.

  
Richard Pollok R.P.L.S. 5825  
Rakowitz Engineering and Surveying  
515 W. Oaklawn Ste. A  
Pleasanton, Texas 78064  
830-281-4060  
Firm No. 10181200





# EXHIBIT "B"

Michael J. Schwarze – 21-2516 – 40 foot access easement – Exhibit B– Page 1 of 2

State of Texas  
County of Atascosa

Field notes for a 40 foot access easement, called Exhibit B, lying in the Anson G. Neal Survey No. 266, Abstract No. 643, Atascosa County, Texas, as shown on the accompanying Plat of Survey prepared for Michael J. Schwarze, dated January 13, 2022.

Field notes for a 40 foot access easement, called Exhibit B, being out of a 131.93 acre tract of land, described in an instrument, recorded in Clerk's File No. 217726, Official Public Records, Atascosa County, Texas, and a 3.09 acre tract of land, described in an instrument, recorded in Clerk's File No. 217723, Official Public Records, Atascosa County, Texas, said tract of land being more particularly described by metes and bounds as follows:

Beginning at a calculated point, lying on the Northwest right of way line of State Highway No. 97, being the Southeast line of said 3.09 acre tract of land, also being the Southeast line of a 10.01 acre tract of land, called Tract 1, surveyed this same day, which bears South 35° 15' 04" West, 500.00 feet, from a found, previously set, 5/8 inch steel rod monument, with a cap stamped Rakowitz Engineering and Surveying, lying on the Northwest right of way line of State Highway No. 97, being the East corner of said 3.09 acre tract of land, the South corner of an apparent abandoned 100 foot S.A.U. & G. Railroad, and the East corner of said Tract 1, also being 20 foot from a 5/8 inch steel rod monument, with a cap stamped Rakowitz Engineering and Surveying, set for the South corner of said Tract 1, being the East corner of a 10.01 acre tract of land, called Tract 13, surveyed this same day, and the centerline of said 40 foot access easement, said point of beginning being the upper East corner of this easement;

Thence North 35° 15' 04" East, 40.00 feet, along the Northwest right of way line of State Highway No. 97, being the Southeast line of said 3.09 acre tract of land, the Southeast line of said Tract 1, and the Southeast line of said Tract 13, to a calculated point, said point being the lower East corner of this easement;

Thence across the said 3.09 acre tract of land and said 131.93 acre tract of land, the following bearings and distances;

South 54° 43' 04" East, 2881.43 feet, across said Tract 13, a 10.01 acre tract of land, called Tract 12, surveyed this same day, a 10.01 acre tract of land, called Tract 11, surveyed this same day, a 10.01 acre tract of land, called Tract 10, surveyed this same day, a 10.01 acre tract of land, called Tract 9, surveyed this same day, and a 10.01 acre tract of land, called Tract 8, surveyed this same day, to a calculated point, being a salient corner of said Tract 8, said point being an angle point of this easement;

South 81° 42' 24" East, 285.73 feet, across said Tract 8, to a calculated point; said point being an angle point of this easement;

North 35° 13' 04" East, 417.86 feet, across said Tract 8, to a calculated point, said point being the South corner of this easement;

South 47° 04' 09" East, 40.37 feet, across said Tract 8, and along the Southwest line of a 10.91 acre tract of land, called Tract 6, surveyed this same day, being the Northeast line of a 13.26 acre tract of land, called Tract 7, surveyed this same day, to a calculated point, said point being the West corner of this easement;

South 35° 13' 04" West, 436.99 feet, across said Tract 6, and a 10.80 acre tract of land, called Tract 5, surveyed this same day, to a calculated point, said point being an angle point of this easement;

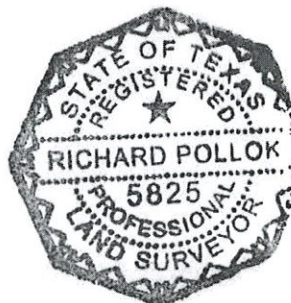
North 81° 42' 24" West, 319.88 feet, across a 10.01 acre tract of land, called Tract 4, surveyed this same day, to a calculated point, said point being an angle point of this easement;

North 54° 43' 04" West, 2891.01 feet, across said Tract 4, a 10.01 acre tract of land, called Tract 3, surveyed this same day, a 10.01 acre tract of land, called Tract 2, surveyed this same day, and said Tract 1, to the point of beginning;

The basis of bearing for this survey is Grid North, Texas State Plane Coordinate System, NAD 83 (2011), South Central Zone.

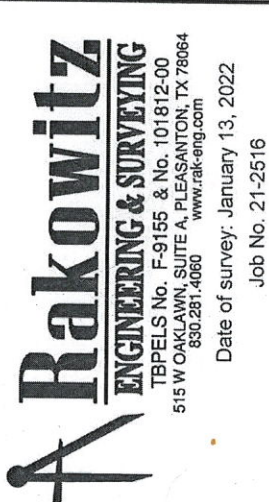
I, Richard Pollok, being a Registered Professional Land Surveyor, registered in the State of Texas, do hereby certify that the foregoing field notes for a 40 foot access easement, as shown on the accompanying Plat of Survey prepared for Michael J. Schwarze, dated January 13, 2022, were prepared from an actual survey done under my supervision and that to the best of my knowledge and belief they are a true and correct representation of said survey.

  
Richard Pollok R.P.L.S. 5825  
Rakowitz Engineering and Surveying  
515 W. Oaklawn Ste A  
Pleasanton, Texas 78064  
830-281-4060  
Firm No. 10181200





A 40 FOOT ACCESS EASEMENT, CALLED EXHIBIT "B", BEING OUT OF A 131.93 ACRE TRACT OF LAND, LYING IN THE ANSON G. NEAL  
OF  
SURVEY NO. 266, ABSTRACT NO. 643, ATASCOSA COUNTY, TEXAS



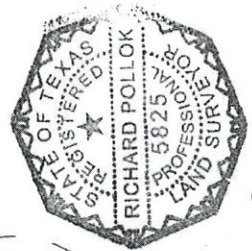
REFERENCES:  
DEED: Clerk's File No. 217726, OPR

LINE	BEARING	DISTANCE
L1	N 81°42'24" W	319.88'
L2	S 35°13'04" W	436.99'
L3	S 47°04'09" E	40.37'
L4	N 35°13'04" E	417.86'
L5	S 81°42'24" E	285.73'
L6	N 35°15'04" E	40.00'

#### REFERENCES:

DEED: Clerk's File No. 217726, OPR

Prepared for:  
Michael J. Schwarze



THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE COMMITMENT, VISIBLE ENCROACHMENTS ARE SHOWN

I, Richard Pollok, being a Registered Professional Land Surveyor, registered in the State of Texas, do hereby certify that this plat was prepared from an actual survey done by me or under my direct supervision, and that to the best of my knowledge and belief it is a true and correct representation of said survey.

**FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS**

*Theresa Carrasco*

Theresa Carrasco, County Clerk

Atascosa County Texas

February 09, 2023 11:55:26 AM

FEE: \$66.00

KPONTON

**231605**

RESTRICT