**DECLARATION OF EASEMENT, ROAD MAINTENANCE, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Effective Date:** May ____, 2024

**Declarant:** 8201 Mt. Sharp Holdings, LLC, a Texas limited liability company

**Mailing Address:** 7 Flat Rock Creek Road, Comfort, Texas 78013

**Property:** Tracts out of the following real property located in Hays County, Texas:

A 116.404 acre tract of land, located in the B.O. Jennings Survey No. 2, Abstract 724, the John C. Coleman Survey No. 530, Abstract 123, the G.W. Cavender Survey No. 587, Abstract 112, and the J.M. Jennings Survey, Abstract 631, Hays County, Texas, and being a portion of a called 363.237 acre tract of land as described of record in Document No. 23025823 of the Official Public Records of Hays County, Texas. Said 116.404 acre tract being more particularly described by metes and bounds in **Exhibit "A"** attached hereto.

**Easement Area:** Need metes and bounds for easement tract -- **Exhibit "B"**.

## RECITALS

A. WHEREAS, Declarant is currently the fee simple owner of the Property.

B. WHEREAS, Declarant intends to develop the Property and sell the Property in various sized tracts to various owners, and Declarant wishes to establish a certain non-exclusive access easement over and across the Easement Area for purposes of ingress and egress for the owners of the Property, and their heirs, successors and assigns.

C. WHEREAS, Declarant intends to create certain covenants, conditions and restrictions applying to the Property for the benefit of Declarant, it heirs, successors and assigns and the future owners of the Property, on the terms and conditions set forth herein.

NOW THEREFORE, Declarant does hereby declare that the Property shall be held, transferred, sold, conveyed, occupied and enjoyed by all present and future owners and occupants subject to the terms of the easement, covenants, conditions and restrictions set forth herein.

## ARTICLE I
## DEFINITIONS

Section 1.1 "Declarant" shall mean and refer to 8201 Mt. Sharp Holdings, LLC, a Texas limited liability company, and its successors and assigns, if such successors or assigns are designated in writing by Declarant as a successor or assignee of all or part of the rights of the Declarant hereunder, including, but not limited to, any assignment to a Lender furnishing financing for the development of the Property.

Section 1.2 "Declaration" shall mean and refer collectively to this instrument and the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by, included, or expressed in this document.

Section 1.3 "Tract" shall mean and refer to each separate tract of land within the Property which may be conveyed by Declarant to a third-party purchaser by a metes and bounds description in a deed or other conveyance instrument.

Section 1.4 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Tract, including contract sellers (a seller under a contract for deed), but excluding those having such interest merely as security for the performance of an obligation.

Section 1.5 "Partition Plat" shall mean one or more parcels of land within the Property, which lay out separate Tracts and applicable streets, roads, and easements. Nothing herein shall require the Declarant to prepare and record a Subdivision Plat in order to divide the Property, provided such division is in accordance with applicable law. Said Partition Plat being attached hereto as **Exhibit "C".**

## ARTICLE 2 - EASEMENT

1.1 Creation of Access Easement. Declarant hereby subjects the Easement Area to a perpetual, non-exclusive easement for the free and uninterrupted pedestrian and vehicular access to and from Tracts 5, 6, 7, and 8 as shown on the Partition Plat ("Easement Holders") to County Road 220 a/k/a Mt. Sharp Road (the "*Easement*"). The Easement shall inure to the benefit of each Owner of Tracts 5, 6, 7 and 8, their heirs, successors and assigns. Declarant, it heirs, successors and assigns.

1.2 Non-Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever.

## ARTICLE 2 – ROAD MAINTENANCE

2.1 Maintenance / Repair. The Easement Holders, their heirs, successors and assigns, will split equally the costs of reasonably maintaining, repairing and replacing the road in the Easement Area according to its current condition, which shall include crowning the road, adding road-quality caliche as necessary, filling potholes and maintaining culverts.

2.2 Upgrade. Any Easement Holder may upgrade or improve the road constructed in the Easement Area without the consent of another Easement Holder, but the non-consenting Owner(s) shall not be responsible for the cost of the upgrade or improvement.

2.3. Restrictions. Each Easement Holder shall be responsible for ensuring that they and their respective contractors, tenants, employees and invitees keep the road in the Easement Area free and unobstructed at all times. No motor vehicle will be allowed to be parked in such a way as to restrict or obstruct the use of the road in the Easement Area or allow any other obstructions to accumulate thereon. There shall be no structures or improvements allowed on the Easement Area, no storing of items or personal property shall be allowed, and no gates or other obstacles shall be used to restrict the use of the road in the Easement Area.

## ARTICLE 3 – RESTRICTIVE COVENANTS

3.1 Restrictive Covenants. Throughout the term of this Declaration, it is expressly agreed that the restrictions set forth on **Exhibit "D"** (the "*Restrictions*") shall apply to each Tract. The Restrictions shall run with each Tract and be binding upon all parties having or acquiring any right, title, or interest in to each Tract or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof during the term of this Declaration. Declarant, its heirs, successors and assigns and each Owner shall have the right to enforce these Restrictions.

3.2 Waiver of Restrictions. The Restrictions are for the benefit of Declarant, its heirs, successors and assigns and each Owner, but are not intended to and do not benefit any other person or the general public. No waiver or termination of any Restriction shall be effective without the joinder of each and every one of the then Owners and Declarant, its heirs, successors or assigns. To be effective, a waiver, modification or termination under this section must be in writing, properly executed and recorded.

## ARTICLE 4 – GENERAL PROVISIONS

4.1 Equitable Rights of Enforcement. This Declaration may be enforced by restraining orders and injunctions prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by an owner of any portion of the Property.

4.2 Duration. The Easement and Restrictions set forth in this Declaration shall be perpetual, and all other provisions of this Declaration shall remain in effect until December 31, 2064 (the "*Initial Term Expiration Date*"), and shall be automatically extended for successive 10 year periods; *provided however*, that the provisions of this Declaration other than the Easement granted herein may be terminated on the Initial Term Expiration Date or upon the end of any 10 year period thereafter by a written instrument executed by Owners of every Tract that comprises the Property at the time the purported termination is made which is recorded in the real property records of Hays County, Texas.

4.3 Amendment. Except as otherwise provided by law or as otherwise expressly set forth herein, this Declaration may only be amended by a written instrument executed by Declarant so long as Declarant owns any portion of the Property, and all the Owners of the Property at the time the purported amendment is made, with such instrument then being recorded in the Official Public Records of Hays County, Texas.

4.4 Miscellaneous.

a. *Attorneys' Fees*. If the Declarant or any owner of the Property retains an attorney to enforce this Declaration and prevails, it will be entitled to recover reasonable attorney's fees and court and other costs.

b. *Governing Law.* This Declaration is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this Declaration. The exclusive venue for any action brought with respect to this Declaration shall lie in Hays County, Texas.

c. *Waiver.* It is not a waiver of or consent to default if an Owner fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Declaration does not preclude pursuit of other remedies in this Declaration or provided by law.

d. *Headings*. The section or paragraph headings in this Declaration are for convenience only and shall not be considered in any construction or interpretation of this Declaration or any part hereof.

e. *Interpretation.* Within this Declaration, when required by the context, each number (singular and plural) shall include all numbers and each gender shall include all genders; use of the neuter shall include the feminine or the masculine, as appropriate.

f. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of Declarant, the owners of the Property, and the heirs, successors and assigns of each of these parties.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the dates set forth in their respective acknowledgements below, to be effective for all purposes, however, as of the date set forth on the first page hereof.

**DECLARANT**:

8201 Mt. Sharp Holdings, LLC, a Texas limited liability company

BY: _____
Zachary Biermann, Manager

STATE OF TEXAS §
§
COUNTY OF HAYS §

The foregoing instrument was acknowledged before me on the _____ day of _____ 2024 by Zachary Biermann, Manager of 8201 Mt. Sharp Holdings, LLC, a Texas limited liability company.

_____
Notary Public, State of Texas

Exhibit "D"

1. No dwelling home shall be moved onto any Tract. Any single-family dwelling on a Tract shall be constructed on site and contain a minimum of two-thousand (2,000) square feet of climate-controlled living space. No more than one (1) main single-family dwelling and two (2) guest homes of no less than seven hundred (750) square feet each, but no larger than the main single family dwelling, shall be permitted on any Tract. No mobile, modular, premanufactured, shipping container, industrial built, travel trailer, recreational vehicle and/or tiny home shall be used as a dwelling or stored on any Tract except as a temporary construction office during active construction of a building, but not longer than twelve (12) months.

2. Swine shall not be kept on any Tract other than in connection with a sanctioned 4-H or FFA livestock project. Other livestock, pet and poultry shall be permitted provided said livestock is kept within the boundaries of the Tract at all times, and they are not offensive to adjacent Tract Owners by smell, sound, or otherwise. There shall not be any commercial feeding operations or commercial breeding of animals, except horses, conducted thereon. Animals used for grazing said property, while simultaneously raising young (i.e. cow/calf operation) shall not be considered commercial breeding of animals.

3. No structure of a temporary character, trailer, camper, garage, or other outbuilding shall be used on any Tract at any time as a residence, except as a temporary residence during active construction of a dwelling, but not longer than twelve (12) months.

4. No portion of the Property may not be used for any commercial purposes, except permanent agricultural crops including vineyards, (except that a winery for commercial production of wines is prohibited), fruit trees, flowers, native specials, pecan groves, beekeeping/honey production, and permanent grass (hay meadows or grazing pastures) shall be permitted. No industrial pursuit or enterprise shall be permitted to be conducted on the Property. Industrial pursuit or enterprise shall mean engaging in the manufacture or assembly of goods or processing of raw materials unserviceable in their natural state for sale or distribution to third parties, including but not limited to those activities as set forth in 4.a:

a. Auto painting and repair, heavy machinery operation or storage, welding or machine shop or machining business; concrete products manufacture;

b. Cottage industries, such as an artisan, i.e. artist, painter, photographer, wood, metal, clay or glass sculptor and other similar activities are permitted;

c. Owners are permitted to "work from home" via internet and telecommunications;

d. Short-term rentals are permitted subject to Section 8 herein.

5. An Owner may construct (no pre fab structures) other ancillary structures, necessary to fulfill their use and enjoyment of the Property, such as barns or stalls, a studio, a workshop or storage facility. The ancillary buildings are for the personal use and benefit of the Owner and are not available as rentals to the general public;

6. No cellular tower or other type of commercial tower shall be erected or placed upon the Property.

7. Abandoned or inoperative equipment, vehicles, or junk shall not be permitted or stored on the Property or any portion of any ingress, egress easement. Inoperable antique and/or classic motor vehicles under active restoration are permitted as long as they are maintained under cover of a building, barn or garage.

8. Noxious or offensive activity shall not be permitted on the Property (Example: constant discharge of firearms). However, this restriction shall not preclude an Owner from pursuing hunting activities of Texas wildlife and game if same can be conducted in a safe manner and in compliance with the law, provided however, no discharge of handguns or rifles shall take place on Tracts smaller than twenty (20) acres. The Property shall be kept free of litter at all times. Disposal of any kind shall not be allowed that would adversely affect the natural beauty and value of the Property. Garbage or refuse shall not be burned or buried on the Property.

9. No structure shall be erected nearer than seventy-five (75') feet from any boundary line of any Tract. Gates and entrance structures are permitted adjacent to the boundary line with ingress, egress roadway to each Tract.

10. Surfacing, mining (including, but not limited to, stone, gravel, sand, caliche), exploration of any type which will damage the surface is prohibited on the Property. Road material, including gravel or caliche, used to construct roads on the Property may be removed and utilized, after which the removal site shall be restored as much as possible to its original condition.

11. No Tract shall be further subdivided.