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BALCONES CREEK

MASTER COVENANT

Bexar County, Texas

NOTE: NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS COVENANT UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS FILED IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, IN ACCORDANCE WITH SECTION 9.05 BELOW.

Declarant: LHM BALCONES CREEK DEVELOPMENT, INC., a Texas corporation

BALCONES CREEK

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BALCONES CREEK MASTER COVENANT

This Balcones Creek Master Covenant (the "**Covenant**") is made by **LHM BALCONES CREEK DEVELOPMENT, INC.**, a Texas corporation (the "**Declarant**"), and is as follows:

RECITALS:

A. HM Leonard, LP, a Texas limited partnership and LHM Balcones Creek, L.P., a Texas limited partnership, are the present owners of certain real property located in Bexar County, Texas, as more particularly described on Exhibit "A" attached hereto (the "**Property**") and hereby consent to the recordation of this Covenant as evidenced below.

B. Declarant desires to create a uniform plan for the development, improvement, and sale of the Property.

C. Portions of the Property may be made subject to this Covenant upon the filing of one or more Notices of Applicability pursuant to *Section 9.05* below, and once such Notices of Applicability have been filed, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Covenant, and the Development in turn will be comprised of separate Development Areas (as defined below) which will be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Covenant.

No portion of the Property is subject to the terms and provisions of this Covenant until a Notice of Applicability is Recorded. A Notice of Applicability may only be filed by the Declarant.

Property versus Development versus Development Area

"Property"	Described on <u>Exhibit "A"</u> . This is the land that <u>may be made</u> subject to this Covenant, from time to time, by the filing of one or more Notices of Applicability. Declarant has no obligation to add all or any portion of the Property to this Covenant.
"Development"	This is the portion of the land described on <u>Exhibit "A"</u> that <u>has been made</u> subject to this Covenant through the filing of a Notice of Applicability.
"Development Area"	This is a portion of the Development. Each Development Area may be made subject to a Development Area Declaration.

D. This Covenant serves notice that upon the further filing of one or more Notices of Applicability, portions of the Property identified in such notice or notices will be subject to the terms and provisions of this Covenant.

NOW, THEREFORE, it is hereby declared that: (i) those portions of the Property as and when made subject to this Covenant by the filing of a Notice of Applicability will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (ii) each contract or deed conveying those portions of the Property which are made subject to this Covenant will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text will control.

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Covenant will have the meanings hereinafter specified:

"Applicable Law" means all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development, specifically including applicable zoning restrictions and permits.

"Assessment" or **"Assessments"** means assessments imposed by the Association under this Covenant.

"Assessment Unit" has the meaning set forth in *Section 5.08*.

"Association" means Balcones Creek Residential Community, Inc., a Texas non-profit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Covenant, the Certificate, the Bylaws, and Applicable Law.

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

"Bulk Rate Contract" or "Bulk Rate Contracts" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without

limitation, security services, trash pick up services, propane service, natural gas service, landscape services and any other services of any kind or nature which are considered by the Board to be beneficial. Each Bulk Rate Contract must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

"Bylaws" means the Bylaws of the Association as adopted and as amended from time to time.

"Certificate" means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"Common Area" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of the Association or its Members. Property or facilities held by the Declarant for the benefit of the Association or its Members will expressly include any portion of the Development or the Property designated by Plat to be maintained by the Association; provided, however, that Declarant reserves the right to designate such areas as Special Common Area, as defined below. No portion of the Development may be designated as Common Area or otherwise conveyed or transferred to the Association without the advance written consent of the Declarant during the Development Period, and thereafter a Majority of the Board. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the filing of such designation, the portion of the Property identified therein will be considered Common Area for the purpose of this Covenant. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

"Community Manual" means the community manual, which may be initially adopted and Recorded by the Declarant as part of the initial project documentation for the benefit of the Association. The Community Manual may include the Bylaws, Rules and other policies governing the Association. The Community Manual may be amended, from time to time, by the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board.

"Declarant" means **LHM BALCONES CREEK DEVELOPMENT, INC.**, a Texas corporation. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations, and duties under this Covenant to any person. Declarant may also, by Recorded written instrument, permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Covenant.

Declarant enjoys special privileges to facilitate the development, construction, and marketing of the Property and the Development, and to direct the size, shape and composition of the Property and the Development. These special rights are described in this Covenant. Many of these rights do not terminate until either Declarant: (i) has sold all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument. Declarant may also assign, in whole or in part, all or any of the Declarant's rights established under the terms and provisions of this Covenant to one or more third-parties.

"Design Guidelines" means the standards for design and construction of Improvements proposed to be placed on any Lot, and adopted pursuant to *Section 6.04(b)*, as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Balcones Creek Reviewer may adopt, and amend from time to time, the Design Guidelines applicable to the Development or any Development Area. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Development Area Declaration by exhibit or otherwise.

"Development" refers to all or any portion of the Property made subject to this Covenant by the filing of a Notice of Applicability.

"Development Area" means any part of the Development (less than the whole), which Development Area may be subject to Development Area Declaration in addition to being subject to this Covenant.

"Development Area Declaration" means, with respect to any Development Area, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected.

"Development Owner" refers to an Owner who acquires a Lot for the purpose of resale to a Homebuilder.

"Development Period" means the period of time beginning on the date when this Covenant has been Recorded, and ending seventy-five (75) years thereafter, unless earlier terminated by a Recorded written instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the Development, and the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property or the Development.

"Documents" means, singularly or collectively as the case may be, this Covenant, the Certificate, Bylaws, the Community Manual, the Design Guidelines (if adopted), any applicable Development Area Declaration, any applicable Notice of Applicability as each may be amended from time to time, and any Rules promulgated by the Association pursuant to this Covenant or

any Development Area Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of a Document. See Table 1 for a summary of the Documents.

"Homebuilder" refers to any Owner who is in the business of constructing single-family residences for resale to third parties and acquires all or a portion of the Development to construct single-family residences for resale to third parties.

"Improvement" means any and all physical enhancements and alterations to the Development, including grading, clearing, removal of trees, site work, utilities, landscaping, trails, hardscape, exterior lighting, alternation of drainage flow, drainage facilities, detention/retention ponds, water features, fences, walls, signage, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature.

"Lot" means any portion of the Development designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat other than Common Area, and Special Common Area.

"Majority" means more than half.

"Manager" has the meaning set forth in *Section 3.07(h)*.

"Maximum Number of Lots" means the maximum number of Lots that may be created and made subject to the terms and provisions of this Covenant. The Maximum Number of Lots for the purpose of this Covenant is 750. Until expiration or termination of the Development Period, Declarant may unilaterally amend the maximum number of Lots that may be created and made subject to the terms and provisions of this Covenant by written Recorded instrument.

"Members" means every person or entity that holds membership privileges in the Association.

"Mortgage" or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

"Mortgagee" or **"Mortgagees"** means the holder(s) of any Mortgage(s).

"Neighborhood Delegate" means the representative elected by the Owners of Lots in each Neighborhood to cast the votes of all Lots in the Neighborhood on all matters requiring a vote of the membership of the Association, except for the following situations in which this Covenant specifically requires Members to cast their vote individually: (i) changes to the term of the Covenant as described in *Section 10.01*; (ii) amendments to the Covenant as described in *Section 10.03*; and (iii) initiation of any judicial or administrative proceeding as described in *Section 10.04*. Notwithstanding the foregoing, a Development Area Declaration, the Certificate of Formation, and/or the Bylaws may set forth additional circumstances in which the Members

are required to cast their vote individually, and voting by Neighborhood Delegates is prohibited.

"Owner" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot. Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

"Plat" means a Recorded subdivision plat of any portion of the Development, and any amendments thereto.

"Property" means all of that certain real property described on Exhibit "A", attached hereto, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 9.03* and *Section 9.04* of this Covenant.

"Record, Recording, Recordation and Recorded" means recorded in the Official Public Records of Bexar County, Texas.

"Resident" means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

"Balcones Creek Reviewer" means Declarant or its designee until expiration of termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Balcones Creek Reviewer will automatically be transferred to the architectural control committee appointed by the Board.

"Service Area" means a group of Lots designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one housing type and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.04*.

"Service Area Assessments" means assessments levied against the Lots in a particular Service Area to fund Service Area Expenses, as described in *Section 5.05*.

"Service Area Expenses" means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.

"Special Common Area" means any interest in real property or improvements which is designated by Declarant in a Notice of Applicability filed pursuant to *Section 9.05*, in a Development Area Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as Special Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Special

Common Area Assessments attributable thereto, to one or more, but less than all of the Lots, Owners or Development Areas, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability, Development Area Declaration, or other written notice will identify the Lots, Owners or Development Areas assigned to such Special Common Area and further indicate whether the Special Common Area is assigned to such parties for the purpose of exclusive use and the payment of Special Common Area Assessments, or only for the purpose of paying Special Common Area Assessments attributable thereto. By way of illustration and not limitation, Special Common Area might include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping.

"Special Common Area Expenses" means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Special Common Area, which may include a reasonable reserve for capital repairs and replacements.

"Special Common Area Assessments" means assessments levied against the Lots Units as described in *Section 5.04*.

"Voting Group" means one or more Neighborhood Delegates, or alternative Neighborhood Delegates as the case may be, who vote on a common slate for election of members of the Board, as more particularly described in *Section 3.05(b)* or, if the context so indicates, the group of Members who are represented by such Neighborhood Delegates. Declarant has no obligation to establish Voting Groups.

TABLE 1: DOCUMENTS	
Covenant (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property made subject to the Covenant by the filing of a Notice of Applicability.
Notice of Applicability (Recorded)	Describes the portion of the Property being made subject to the terms and provisions of the Covenant.
Development Area Declaration (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Development.
Certificate of Formation (Filed with Secretary of State and Recorded)	Establishes the Association as a not-for-profit corporation under Texas law.
Bylaws (Recorded)	Governs the Association's internal affairs, such as elections, meetings, etc.
Community Manual (Recorded)	Establishes rules and policies governing the Association.
Design Guidelines (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto.
Rules (if adopted, Recorded)	Rules regarding the use of property, activities, and conduct within the Development.
Board Resolutions (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Association.

ARTICLE 2 GENERAL RESTRICTIONS

2.01 General.

(a) Conditions and Restrictions. All Lots within the Development to which a Notice of Applicability has been filed in accordance with *Section 9.05*, will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents. **NO PORTION OF THE PROPERTY WILL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN RECORDED.**

(b) Applicable Law. Compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each restriction which may be applicable to a Lot located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot. Furthermore, an approval by the Balcones Creek Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot.

(c) Approval by Local Governmental Authorities. Each Owner is further advised that as of the date of this Covenant, local governmental authorities may require

that the Owner obtain from the Balcones Creek Reviewer approval of all Improvements proposed to be located on a Lot prior to submitting plans for the Improvements to the local governmental authorities for approval. Each Owner is further advised that if any local governmental authority requires pre-approval of all Improvements by the Balcones Creek Reviewer prior to submission to the local authority for approval, any approval granted by the Balcones Creek Reviewer, or any notation on the plans signifying Balcones Creek Reviewer approval, is conditional and no Improvements may be constructed on the Lot until the Owner has submitted to the Balcones Creek Reviewer a copy of the plans and specifications approved by the local governmental authority and the Balcones Creek Reviewer has issued to the owner a "Notice to Proceed". In the event of a conflict between the plans and specifications approved by the Balcones Creek Reviewer and the plans and specifications approved by a local governmental authority, the Balcones Creek Reviewer may require that the Owner resubmit the plans and specifications for re-approval by the Balcones Creek Reviewer, may withdraw the approval previously granted to the Owner, or may require that the Owner apply to the Balcones Creek Reviewer for a variance. Each Owner acknowledges that no local governmental authority has the authority to modify the terms and provisions of this Covenant, any Development Area Declaration, or the Design Guidelines applicable to the Development. A local governmental authority may change or modify the requirements and procedures applicable to their approval of plans and specifications for the construction of Improvements, and each Owner is advised to contact each local governmental authority to obtain a current version of such requirements and procedures.

2.02 Incorporation of Development Area Declarations. Upon Recordation of a Development Area Declaration such Development Area Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but will apply only to the Development Area described in and covered by such Development Area Declaration. To the extent of any conflict between the terms and provisions of a Development Area Declaration and this Covenant, the terms and provisions of this Covenant will apply.

2.03 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or the Development, including any statements or projections as to Assessments, and expressly including any of the foregoing prepared by the Declarant (collectively, the "Conceptual Plans") are conceptual in nature and/or estimates only. **The land uses reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Development may include uses which are not shown on the Conceptual Plans and such land uses may be changed from time to time and at any time by the Declarant without notice to any Owner. It is also understood and agreed that Assessments will change based on actual expenses incurred by the Association and no assurances are provided regarding the accuracy of any estimated Assessments.** The Declarant makes no representation or warranty concerning the Conceptual Plans, proposed land uses, proposed planned Improvements, or Assessments attributable to all or any portion of the

Property or the Development and no Owner will be entitled to rely upon the Conceptual Plans, or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, proposed or planned Improvements, or Assessments when making the decision to purchase any property or construct any Improvements within the Property or the Development. Each Owner who acquires a Lot within the Development acknowledges that the Development is a master planned community, the development of which will extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

The Development is a master planned community which will be developed over a number of years. The plans, land uses, projected Improvements, Assessments, and Documents are subject to change from time to time.

2.04 Provision of Benefits and Services to Service Areas.

(a) Declarant, in a Notice of Applicability filed pursuant to *Section 9.05* or in any written notice Recorded, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Development. Declarant may unilaterally amend any Notice of Applicability or any written notice Recorded, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (a) special benefits or services which are not provided to all Lots, or (b) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the Lots within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services will be assessed against the Lots within such Service Area as a Service Area Assessment.

ARTICLE 3
BALCONES CREEK RESIDENTIAL COMMUNITY, INC.

3.01 **Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor the Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Covenant.

3.02 **Neighborhoods.** Every Lot will be located within a "Neighborhood". Lots are grouped into Neighborhoods to: (i) facilitate a system of representative voting on certain matters which the Documents require approval of the Association's membership; and (ii) to promote a sense of community and belonging by permitting Owners and Residents within a Neighborhood to share, discuss and take action on issues unique to their Neighborhood. A Neighborhood may be comprised of any number of Lots and may include Lots of more than one type, as well as Lots that are not contiguous to one another. Each Neighborhood will elect one "Neighborhood Delegate" to cast the votes allocated to all Lots in that Neighborhood on certain matters requiring a vote of the membership of the Association as more particularly described in the definition of "Neighborhood Delegate" in *Article 1* of this Covenant. However, until such time as the Declarant first calls for election of a Neighborhood Delegate for a particular Neighborhood, each Owner of a Lot in such Neighborhood shall be considered a "Neighborhood Delegate" and may individually cast the vote allocated to such Owner's Lot on any issue requiring a vote of the Neighborhood Delegates under this Covenant.

Each Notice of Applicability shall initially assign the portion of the Property described therein to a specific Neighborhood which may then exist (being identified and described in a previously Recorded Notice of Applicability) or may be newly created. Declarant may Record an amendment to any previously Recorded Notice of Applicability to designate or change Neighborhood boundaries.

3.03 **Membership.**

(a) **Mandatory Membership.** Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, an Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any resident other than the Owner.

(b) **Easement of Enjoyment – Common Area.** Every Member will have a right and easement of enjoyment in and to all of the Common Area for its intended

purposes and an access easement, if applicable, by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) The right of the Declarant, or the Declarant's designee, to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;
- (ii) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such Member is in violation of any provision of this Covenant;
- (iii) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;
- (iv) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- (v) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and
- (vi) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

(c) Easement of Enjoyment – Special Common Area. Each Owner of a Lot which has been assigned use of Special Common Area in a Notice of Applicability, Development Area Declaration, or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if applicable, by and through such Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot, subject to the following restrictions and reservations:

- (i) The right of the Declarant to cause such Improvements and features to be constructed upon the Special Common Area, as

determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

- (ii) The right of Declarant to grant additional Lots use rights in and to Special Common Area in a subsequently filed Notice of Applicability, Development Area Declaration, or Recorded instrument;
- (iii) The right of the Association to suspend the Member's rights to use the Special Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such Member is in violation of any provision of this Covenant;
- (iv) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Special Common Area to any public agency, authority or utility for any purpose;
- (v) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage the Special Common Area;
- (vi) The right of the Declarant, during the Development Period, and the Board, with the advance written approval of the Declarant during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon; and
- (vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

3.04 Governance. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in the Documents to the contrary, until one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed by Owners other than the Declarant, Declarant will have the sole right to appoint and remove all members of the Board. Within one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed to Owners other than the Declarant, the Board will call a meeting of Members of the Association for the purpose of**

electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

3.05 Voting. A Notice of Applicability, adding portions of the Property to the terms and provisions of this Covenant and filed in accordance with *Section 9.05*, will include a Neighborhood designation. However, the representative system of voting is optional and shall only be established if the Declarant first calls for election of a Neighborhood Delegate for a particular Neighborhood. If Declarant calls for an election of a Neighborhood Delegate for a particular Neighborhood, then in such event Declarant shall have elected to establish the representative system of voting for the Development unless, on or before expiration or termination of the Development Period, Declarant Records a written notice terminating the representative system of voting. Until an election is called by the Declarant for a particular Neighborhood, or if the representative system is terminated by the Declarant on or before expiration of the Development Period, each Owner of a Lot in a Neighborhood shall be considered a Neighborhood Delegate and may individually cast the vote allocated to such Owner's Lot on any issue requiring a vote of the Neighborhood Delegates under this Covenant.

(a) Voting Rights. The Owners of Lots in each Neighborhood elect a "Neighborhood Delegate" and an alternative Neighborhood Delegate, in the manner provided below, to cast the votes of all Lots in the Neighborhood on matters requiring a vote of the membership, except where this Covenant specifically requires the Owners or Members to cast their votes individually as more particularly described in the definition of "Neighborhood Delegate" in *Article 1* of this Covenant. Notwithstanding the foregoing or any provision to the contrary in this Covenant, as provided in *Section 3.04* above, until one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed by Owners other than the Declarant, Declarant will appoint and remove all members of the Board.

Candidates for election as the Neighborhood Delegate and alternate Neighborhood Delegate from a Neighborhood shall be Owners of Lots in the Neighborhood, spouses of such Owners, Residents of the Neighborhood, or an entity representative where an Owner is an entity. The Neighborhood Delegate and the alternate Neighborhood Delegate shall be elected on a biennial basis (once every two years), by electronic and absentee ballot without a meeting of Owners, or at a meeting of the Owners within each Neighborhood where written, electronic, proxy, and absentee ballots (or any combination of the foregoing) may also be utilized, as the Board determines. If the Board determines to hold a meeting for the election of the Neighborhood Delegate and the alternate Neighborhood Delegate, the presence, in person or by proxy, absentee or electronic ballot, of Owners representing at least ten

percent (10%) of the total votes in a Neighborhood shall constitute a quorum at such meeting.

If the Declarant calls for the first election of a Neighborhood Delegate from a Neighborhood, subsequent elections shall, if necessary, be held within thirty (30) days of the same date each year. Notwithstanding the foregoing provision, the Declarant during the Development Period, and the Board thereafter, may elect to extend the term of a Neighborhood Delegate and alternate Neighborhood Delegate to the extent Declarant or the Board, as applicable, determines that such extension will result in administrative efficiencies by allowing elections within different Neighborhoods to occur in close proximity to one another; provided, however, that the term of an existing Neighborhood Delegate and alternate Neighborhood Delegate shall not be extended for more than twelve (12) months. At any Neighborhood election, the candidate for each position who receives the greatest number of votes shall be elected to serve as the Neighborhood Delegate and the candidate with the second greatest number of votes shall be elected to serve as the alternate Neighborhood Delegate. The Neighborhood Delegate and alternate Neighborhood Delegate shall serve until his or her successor is elected.

Any Neighborhood Delegate or alternate Neighborhood Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a Majority of the votes allocated to the Lots in the Neighborhood that the Neighborhood Delegate represents. If a Neighborhood Delegate is removed in accordance with the foregoing sentence, the alternate Neighborhood Delegate shall serve as the Neighborhood Delegate unless also removed.

The Neighborhood Delegate or, in his or her absence, the alternate Neighborhood Delegate, attends Association meetings and casts all votes allocated to Lots in the Neighborhood that he or she represents on any matter as to which such Neighborhood Delegate is entitled to vote under this Covenant. A Neighborhood Delegate may cast all votes allocated to Lots in the Neighborhood in such delegate's discretion and may, but need not, poll the Owners of Lots in the Neighborhood which he or she represents prior to voting. Neither the Neighborhood Delegate nor the alternative Neighborhood Delegate may casts votes allocated to Lots not owned by such Neighborhood Delegate in the Neighborhood that he or she represents for the purpose of amending this Covenant.

Neighborhood Delegates are subordinate to the Board and their responsibility and authority does not extend to policy making, supervising, or otherwise being involved in Association governance.

In any situation in which an Owner or Member is entitled individually to exercise the vote allocated to such Owner's Lot, if there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners holding a Majority of the

ownership interest in the Lot determine among themselves and advise the Secretary of the association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled pursuant to *Section 3.06*.

(b) Voting Groups. Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing members of the Board. The purpose of Voting Groups is to provide groups with dissimilar interests the opportunity to be represented on the Board and to avoid a situation in which less than all the Neighborhoods are able to elect the entire Board.

The Neighborhood Delegates representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board. Each Voting Group is entitled to elect the number of members of the Board specified in the Voting Group Designation (hereinafter defined).

Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Development Period by Recording a written instrument identifying each Voting Group such that the Neighborhoods within each Voting Group can be determined (the "**Voting Group Designation**"). The Voting Group Designation will assign to each Voting Group the number of members of the Board which such Voting Group is entitled to exclusively elect. Such designation may be amended unilaterally by the Declarant at any time prior to the expiration of the Development Period.

After expiration of the Development Period, the Board shall have the right to Record or amend such Voting Group Designation upon the vote of a Majority of the Board and approval of Neighborhood Delegates representing a Majority of the Neighborhoods. Neither Recordation nor amendment of such Voting Group Designation shall constitute an amendment to this Covenant, and no consent or approval shall be required except as stated in this paragraph. Until such time as Voting Groups are established, all of the Development shall constitute a single Voting Group. After a Voting Group Designation is Recorded, any and all portions of the Development which are not assigned to a specific Voting Group shall constitute a single Voting Group.

3.06 Voting Allocation. The number of votes which may be cast for election of members to the Board (except as provided by *Section 3.04*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) Each Owner of each Lot be allocated one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot into two or more Lots: (i) the number of votes to which such Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, e.g., each Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, voting rights and Assessments will continue to be determined according to the number of original Lots contained in such consolidated Lot. Nothing in this Covenant will be construed as authorization for any re-subdivision or consolidation of Lots, such actions being subject to the conditions and restrictions of the applicable Development Area Declaration.

(b) In addition to the votes to which Declarant is entitled by reason of *Section 3.06(a)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period.

(c) Declarant may cast votes allocated to the Declarant pursuant to this *Section 3.06*, shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Development as a pre-condition to exercising such votes.

3.07 Powers. The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) **Rules.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules not in conflict with this Covenant, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association. Any Rules and any modifications thereto by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(b) **Insurance.** To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) **Records.** To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available

for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect Assessments and to determine Assessment Units, as provided in *Article 5* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Documents. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or their successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area or Special Common Area in enforcing this Covenant before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH OWNER AND RESIDENT HEREBY RELEASES AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.07(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate Applicable Law or the Documents. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 3.07(g)* must be approved in advance and in writing by the Declarant.

In addition, the Association is expressly authorized and permitted to convey easements over and across Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provision of this Covenant.

(h) Manager. To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, and all other utilities, services, repair and maintenance, including but not limited to private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

(k) Construction on Common Area and Special Common Area. To construct new Improvements or additions to Common Area and Special Common Area, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, Special Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Authority with Respect to Development Area Declaration. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any Development Area Declaration. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 3.07(m)* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

(n) Membership Privileges. To establish Rules governing and limiting the use of Common Area, Special Common Area, and any Improvements thereon. All rules governing and limiting the use of Common Area, Special Common Area, and any Improvements thereon must be approved in advance and in writing by the Declarant during the Development Period.

3.08 Acceptance of Common Area and Special Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant may transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, or the Development and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of the Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Covenant. Such property will be accepted by the Association and thereafter will be maintained as Common Area or Special Common Area, as applicable, by the Association for the benefit of the Development and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the

Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association to the extent conveyed in error or needed to make minor adjustments in property lines, as determined in the sole and absolute discretion of the Declarant.

3.09 **Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she (i) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

3.10 **Insurance.** The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee member, employee, servant or agent of the Association, or arising out of the person's status as such, whether or not the Association would have the power to indemnify the person against such liability or otherwise.

3.11 **Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 3.07* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Special Common Area, or Individual, as the case may be) against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled

to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.12 Community Services and Systems. The Declarant, or any affiliate of the Declarant with the Declarant's consent, during the Development Period, and the Board, with the Declarant's consent during the Development Period, is specifically authorized to provide, or to enter into contracts with other persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve all or any portion of the Development ("**Community Services and Systems**"). In the event the Declarant, or any affiliate of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Development, the Declarant or affiliate of the Declarant may enter into an agreement with the Association with respect to such services. In the event Declarant, or any affiliate of the Declarant, enters into a contract with a third party for the provision any Community Services and Systems to serve all or any portion of the Development, the Declarant or the affiliate of the Declarant may assign any or all of the rights or obligations of the Declarant or the affiliate of the Declarant under the contract to the Association. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or the Board, as applicable, determines appropriate. Each Owner acknowledges that interruptions in Community Services and Systems and services will occur from time to time. The Declarant and the Association, or any of their respective affiliates, board members, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

3.13 **Protection of Declarant's Interests.** Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by the Declarant, the Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

ARTICLE 4

INSURANCE AND RESTORATION

4.01 **Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such other insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot or any Improvements or personal property located on a Lot.

4.02 **Restoration Requirements.** In the event of any fire or other casualty, the Owner will either: (i) unless otherwise approved by the Balcones Creek Reviewer, promptly commence the repair, restoration and replacement of any damaged or destroyed Improvements to their same exterior condition existing prior to the damage or destruction thereof within one hundred and eighty (180) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion; or (ii) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Development within sixty (60) days after the occurrence of such damage. Any repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials identical to those originally used in the Improvements damaged or destroyed. To the extent that the Owner fails to commence repair, restoration, replacement, or the removal of debris, within the time period required in this Section 4.02, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and the costs incurred by the Association will be levied as an Individual Assessment against such Owner's Lot; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration,

replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be added to the Individual Assessment chargeable to the Owner's Lot. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.03 **Restoration - Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned-up by the Association pursuant to the rights granted under this *Article 4*, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5

COVENANT FOR ASSESSMENTS

5.01 Assessments.

(a) Assessments established by the Board pursuant to the provisions of this *Article 5* will be levied against each Lot in amounts determined pursuant to *Section 5.08* below. The total amount of Assessments will be determined by the Board in accordance with the terms of this *Article 5*.

(b) Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot is created). The

Association may enforce payment of such Assessments in accordance with the provisions of this *Article 5*.

(c) Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.02 **Maintenance Fund.** The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Covenant.

5.03 **Regular Assessments.** Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. The budget prepared by the Association for the purpose of determining Regular Assessments will exclude the operation, maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. Regular Assessments sufficient to pay such estimated net expenses will then be levied at the level set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Individual Assessment by any Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.04 **Special Common Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and surplus from the prior year's fund. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including non-payment of any individual Special Common Area Assessment, the

Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.05 **Service Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of estimated Service Area Expenses for each Service Area will be allocated either: (i) equally; (ii) based on Assessment Units; or (iii) based on the benefit received among all Lots in the benefited Service Area and will be levied as a Service Area Assessment. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

5.06 **Special Assessments.** In addition to the Regular Assessments provided for above, the Board may levy Special Assessments whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under this Covenant. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Special Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments and will be allocated among such Owners based on Assessment Units.

5.07 **Individual Assessments.** In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Lot. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and project documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Lot; (viii) common expenses that benefit fewer than all of the Lots or, which may be assessed according to benefit received; (ix) fees or charges levied against the Association on a

per-Lot basis; and (x) "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

5.08 **Amount of Assessment.**

(a) The Board will levy Assessments against each "**Assessment Unit**" (as defined in *Section 5.08(b)* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.03* and *Section 5.06* will be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 5.04* will be levied uniformly against each Assessment Unit allocated to a Lot that has been assigned the obligation to pay Special Common Area Assessments for specified Special Common Area. Service Area Assessments levied pursuant to *Section 5.05* will be levied uniformly against each Assessment Unit allocated to a Lot that has been included in the Service Area to which such Service Area Assessment relates.

(b) Each Lot will constitute one "**Assessment Unit**" unless otherwise provided in *Section 5.08(c)*.

(c) Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one Assessment Unit to a Lot. An allocation of more than one Assessment Unit to a Lot must be made in a Notice of Applicability or in a Development Area Declaration for the Development in which the Lot is located. Declarant's determination regarding the number of Assessment Units applicable to a Lot pursuant to this *Section 5.08(c)* will be final, binding and conclusive.

(d) Notwithstanding anything in this Covenant to the contrary, no Assessments will be levied upon Lots owned by Declarant.

(e) Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development or Lot from Assessments; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development or Lot; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development or Lot. In the event Declarant elects to delay or reduce Assessments pursuant to this *Section 5.08(e)*, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument.

5.09 **Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

5.10 **Owner's Personal Obligation for Payment of Assessments.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1 and 1/2% per month), together with all costs and expenses of collection, including reasonable attorneys fees.

5.11 **Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 5* is, together with late charges as provided in *Section 5.09* and interest as provided in *Section 5.10* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.01(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for (i) tax and governmental assessment liens; (ii) all sums secured by a first mortgage Recorded lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; and (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded, before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the officers of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Covenant will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment

lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.11*, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12 day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable services, provided through the Association and not paid for directly by a Owner or occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Covenant to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other liens superior to the Assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no administrative transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

5.12 **Exempt Property.** The following area within the Development will be exempt from the Assessments provided for in this *Article 5*:

- (a) All area dedicated and accepted by a public authority, by the Recordation of an appropriate document;

- (b) The Common Area and the Special Common Area; and
- (c) Any portion of the Property or Development owned by Declarant.

No portion of the Property will be subject to the terms and provisions of this Covenant, and no portion of the Property (or any owner thereof) will be obligated to pay Assessments hereunder unless and until such Property has been made subject to the terms of this Covenant by the filing of a Notice of Applicability in accordance with *Section 9.05* below.

5.13 Fines and Damages Assessment. The Board may assess fines against an Owner for violations of any restriction set forth in the Documents which have been committed by an Owner, a Resident, or family, guests, employees, contractors, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 5.13* will be considered an Individual Assessment pursuant to this Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or Special Common Area or any facilities caused by an Owner, a Resident, or family, guests, employees, contractors, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the rules and/or informing them of potential or probable fines or damage Assessments. The Board may from time to time adopt a schedule of fines.

The procedure for assessment of fines and damage charges will be as follows:

- (a) the Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the Assessment of the fine or damage charge by the Board;
- (b) the notice of the fine or damage charge must describe the violation or damage;
- (c) the notice of the fine or damage charge must state the amount of the fine or damage charge;
- (d) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and
- (e) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation (if the violation is capable of being remedied) and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 5.10* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.01(b)* of this Covenant. Unless otherwise provided in this *Section 5.13*, the fine and/or damage charge will be considered an Individual Assessment for the purpose of this *Article 5*, and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 5*.

5.14 Working Capital Assessment. Each Owner (other than Declarant) will pay a one-time working capital assessment to the Association in such amount as may be determined by the Board from time to time in its sole and absolute discretion. Such working capital assessment need not be uniform among all Lots, and the Board is expressly authorized to levy working capital assessments of varying amounts depending on the size, use and general character of the Lots then being made subject to such levy. The levy of any working capital assessment will be effective only upon the Recordation of a written notice, signed by a duly authorized officer of the Association, setting forth the amount of the working capital assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who (i) is a Homebuilder; or (ii) a Development Owner will not be subject to the working capital Assessment; however, the working capital Assessment will be payable by any Owner who acquires a Lot from a Homebuilder or Development Owner for residential living purposes or by any Owner who: (i) acquires a Lot and is not in the business of constructing single-family residences for resale to a third party; or (ii) who acquires the Lot for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the working capital Assessment to a particular Owner, Declarant's determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this *Section 5.14*. The working capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 5* and will not be considered an advance payment of such Assessments. The working capital Assessment hereunder will be due and payable to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital Assessment attributable to a Lot (or all Lots) by the

Recordation of a waiver notice or in the Notice of Applicability, which waiver may be temporary or permanent.

ARTICLE 6
BALCONES CREEK REVIEWER

6.01 **Architectural Control By Declarant.** During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Balcones Creek Reviewer for Improvements is Declarant or its designee. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this *Article 6* and need not be approved in accordance herewith.

(a) **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

(b) **Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this *Article 6* to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. The Declarant is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the Declarant; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.02 **Architectural Control by Association.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "ACC") will

assume jurisdiction over architectural control and will have the powers of the Balcones Creek Reviewer hereunder.

(a) ACC. The ACC will consist of at least three (3) but not more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

(b) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this *Article 6*. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.03 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Balcones Creek Reviewer. The Balcones Creek Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property and the Development. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement, provided that such action is not visible from any other portion of the Development or Property.

NO IMPROVEMENT MAY BE CONSTRUCTED, ALTERED, OR MODIFIED WITHOUT THE ADVANCE WRITTEN APPROVAL OF THE BALCONES CREEK REVIEWER.

6.04 Architectural Approval.

(a) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines or any additional rules adopted by the Balcones Creek Reviewer together with any review fee which is imposed by the Balcones Creek Reviewer in accordance with *Section 6.04(b)*. No plat, re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the contractor which the Owner intends to use to

construct the proposed Improvement have been approved in writing by the Balcones Creek Reviewer. The Balcones Creek Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Balcones Creek Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Balcones Creek Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Balcones Creek Reviewer, in its sole discretion, may require. Site plans must be approved by the Balcones Creek Reviewer prior to the clearing of any Lot, or the construction of any Improvements. The Balcones Creek Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or on any grounds that, in the sole and absolute discretion of the Balcones Creek Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Covenant, the Balcones Creek Reviewer may issue an approval to Homebuilders for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Covenant.

(b) Design Guidelines. The Balcones Creek Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines which may apply to all or any portion of the Development. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Covenant, the terms and provisions of this Covenant will control. In addition, the Balcones Creek Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Covenant. Such charges will be held by the Balcones Creek Reviewer and used to defray the administrative expenses and any other costs incurred by the Balcones Creek Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Balcones Creek Reviewer will be distributed to the Association at the end of each calendar year. The Balcones Creek Reviewer will not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Guidelines, is assembled and submitted to the Balcones Creek Reviewer. The Balcones Creek Reviewer will have the authority to adopt such additional or alternate procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Balcones Creek Reviewer as provided herein, and the Balcones Creek

Reviewer fails to either approve or reject such plans and specifications for a period of thirty (30) days following such submission, the plans and specifications will be deemed disapproved.

(d) Variances. The Balcones Creek Reviewer may grant variances from compliance with any of the provisions of the Documents, when, in the opinion of the Balcones Creek Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by the Declarant until expiration or termination of the Development Period, a Majority of the Board, and a Majority of the members of the ACC. Each variance must also be Recorded; provided, however, that failure to Record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Balcones Creek Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Documents will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

(e) Duration of Approval. The approval of the Balcones Creek Reviewer of any final plans and specifications, and any variances granted by the Balcones Creek Reviewer will be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Balcones Creek Reviewer, and the Balcones Creek Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.04(e)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Balcones Creek Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Balcones Creek Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Balcones Creek Reviewer.

(g) Non-Liability of Balcones Creek Reviewer. **THE BALCONES CREEK REVIEWER WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON**

FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE
OF THE BALCONES CREEK REVIEWER'S DUTIES UNDER THIS COVENANT.

ARTICLE 7
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Development. The provisions of this *Article 7* apply to the Covenant and the Bylaws of the Association.

7.01 **Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.02 **Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

7.03 **Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portion of the Development.

ARTICLE 8
EASEMENTS

8.01 **Right of Ingress and Egress.** Declarant, its agents, employees and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property or the Development. The

Development shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Services and Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Services and Systems and to provide the services available through the Community Services and Systems to any and all Lots within the Development. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Services and Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Services and Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Services and Systems installed by Declarant and the services provided through such Community Services and Systems are exclusive, and no other person may provide such services through the Community Services and Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in cable television and other Community Services and Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Services and Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

8.02 **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third-party prior to any portion of the Property becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Property and the Development.

8.03 **Roadway and Utility Easements.** Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Development for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development, the Property, and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development, the Property, and any other property owned by Declarant; (iii) the installation, operation and maintenance of walkways, pathways and trails, drainage systems, street lights

and signage to serve the Development, the Property, and any other property owned by Declarant, and (iv) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, drives, or other areas to serve the Development, the Property, and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iv) of this *Section 8.03*. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

8.04 **Subdivision Entry and Fencing Easement.** Declarant reserves for itself and the Association, an easement over and across the Development for the installation, maintenance, repair or replacement of certain subdivision entry facilities and fencing which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the subdivision entry facilities and fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities and/or fencing as Common Area, Special Common Area, or a Service Area.

8.05 **Landscape, Monumentation and Signage Easement.** Declarant hereby reserves an easement over and across the Development for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Special Common Area, or a Service Area.

8.06 **Declarant as Attorney in Fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of the Documents, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of the Documents. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

ARTICLE 9
DEVELOPMENT RIGHTS

9.01 **Development.** It is contemplated that the Development will be developed pursuant to a plan, which may, from time to time, be amended or modified by the Declarant in its sole and absolute discretion. Declarant reserves the right, but will not be obligated, to designate Development Areas, and to create and/or designate Lots, Neighborhoods, Voting Groups, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Development and Property. As each area is conveyed, developed or dedicated, Declarant may Record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Area Declaration may provide its own procedure for the amendment thereof.

9.02 **Special Declarant Rights.** Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Development; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and the right and privilege to conduct the activities enumerated in this *Section 9.02* shall remain until two (2) years after the expiration or termination of the Development Period.

9.03 **Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property and, upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Covenant, and upon the further filing of a Notice of Applicability meeting the requirements of *Section 9.05* below, such added lands will be considered part of the Development subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant will be the same with respect to such added land as with respect to the lands originally covered by this Covenant. To add lands to the Property, Declarant will be required only to Record, a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

(a) A reference to this Covenant, which reference will state the document number or volume and page wherein this Covenant is Recorded;

(b) A statement that such land will be considered Property for purposes of this Covenant, and that upon the further filing of a Notice of Applicability meeting the requirements of *Section 9.05* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant will apply to the added land; and

- (c) A legal description of the added land.

9.04 **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Covenant and the jurisdiction of the Association any portion of the Development. Upon any such withdrawal and renewal this Covenant and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development withdrawn. To withdraw lands from the Development hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (a) A reference to this Covenant, which reference will state the document number or volume and page number wherein this Covenant is Recorded;

- (b) A statement that the provisions of this Covenant will no longer apply to the withdrawn land; and

- (c) A legal description of the withdrawn land.

9.05 **Notice of Applicability.** Upon Recording, this Covenant serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Covenant. This Covenant will apply to and burden a portion or portions of the Property upon the filing of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Covenant. To be effective, a Notice of Applicability must be executed by Declarant, and the property included in the Notice of Applicability need not be owned by the Declarant if included within the Property. Declarant may also cause a Notice of Applicability to be filed covering a portion of the Property for the purpose of encumbering such Property with this Covenant and any Development Area Declaration previously Recorded by Declarant (which Notice of Applicability may amend, modify or supplement the restrictions, set forth in the Development Area Declaration, which will apply to such Property). To make the terms and provisions of this Covenant applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be Recorded containing the following provisions:

- (a) A reference to this Covenant, which reference will state the document number or volume and page number wherein this Covenant is Recorded;

- (b) A reference, if applicable, to the Development Area Declaration which will apply to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Area Declaration which will apply to such portion of the Property), which reference will state the document number or volume and page wherein the Development Area Declaration is Recorded;

- (c) A statement that all of the provisions of this Covenant will apply to such portion of the Property;
- (d) A legal description of such portion of the Property; and
- (e) If applicable, a description of any Special Common Area which benefits the Property and the beneficiaries of such Special Common Area.

NOTICE TO TITLE COMPANY

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT AND THIS COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS COVENANT HAS BEEN RECORDED.

9.06 **Assignment of Declarant's Rights.** Notwithstanding any provision in this Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, reservations and duties hereunder.

ARTICLE 10
GENERAL PROVISIONS

10.01 **Term.** Upon the filing of a notice pursuant to *Section 9.05*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant will run with and bind the portion of the Property described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is Recorded, and continuing through and including January 1, 2067, after which time this Covenant will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Neighborhood Delegate system of voting is not applicable to a change as contemplated in this *Section 10.01*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. Notwithstanding any provision in this *Section 10.01* to the contrary, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land

may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

10.02 **Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

10.03 **Amendment.** This Covenant may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Neighborhood Delegate system of voting is not applicable to an amendment as contemplated in this *Section 10.03*, it being understood and agreed that any amendment must be approved by a vote of the Members, with each Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period.

Specifically, and not by way of limitation, Declarant may unilaterally amend this Covenant and any Development Area Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

10.04 **Initiation of Litigation by Association.** The Association will not initiate any judicial or administrative proceeding unless first approved by Members entitled to cast at least seventy-five percent (75%) of the total number of votes of the Association (the foregoing shall in no way be interpreted to mean seventy-five percent (75%) of a quorum as established pursuant

to the Bylaws), excluding the votes held by Declarant, except that no such approval will be required for actions or proceedings:

- (a) initiated while Declarant owns any portion of the Property or the Development; or
- (b) initiated to enforce the provisions of the Documents, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

The Neighborhood Delegate system of voting is not applicable to initiating any judicial or administrative proceeding as contemplated in this *Section 10.04*, it being understood and agreed that any initiation of judicial or administrative proceeding required to be approved by the Members, must be approved by a vote of the Members, with each Member casting their vote individually. This *Section 10.04* will not be amended unless such amendment is approved by the same percentage of votes necessary to institute judicial or administrative proceedings except any such amendment must also be approved in writing by Declarant until the expiration or termination of the Development Period.

10.05 **Enforcement.** The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. Each Owner, by accepting title to all or any portion of the Development, hereby releases and shall hold harmless each of the Declarant, the Association, and their partners, directors, officers, or agents from and against any damages, claims or liability associated with the failure of the Declarant or the Association to enforce the terms and provisions of the Documents.

10.06 **No Warranty of Enforceability.** The Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Documents. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions in the Documents will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

10.07 **Higher Authority.** The terms and provisions of this Covenant are subordinate to Applicable Law. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with Applicable Law.

10.08 **Severability.** If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

10.09 **Conflicts.** If there is any conflict between the provisions of this Covenant, the Certificate of Formation, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Development Area Declaration, the provisions of this Covenant will govern.

10.10 **Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

10.11 **Acceptance by Grantees.** Each grantee of a Lot, or other real property interest in the Development, by the acceptance of a deed of conveyance, and each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or to whom this Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

10.12 **Damage and Destruction.**

(a) Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 11.12(a)*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of

the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 5*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(f) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots.

(g) In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages or deeds of trust on their Lots.

10.13 No Partition. Except as may be permitted in this Covenant or amendments thereto, no physical partition of the Common Area or Special Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless all or the portion of the Development in question has been removed from the provisions of this Covenant pursuant to *Section 9.04* above. This *Section 10.13* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Covenant.

10.14 **View Impairment.** Neither the Declarant, the ACC, nor the Association guarantee or represent that any view over and across the Lots, or any open space within the Development will be preserved without impairment. The Declarant, ACC, and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area or Special Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

10.15 **Safety and Security.** Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Residents of such Owner's Lot that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Development assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

10.16 **Notices.** Any notice permitted or required to be given to any person by this Covenant will be in writing and may be delivered either personally or by mail, or as otherwise provided in this Covenant or required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

EXECUTED to be effective on the date this instrument is Recorded.

[SIGNATURE PAGE FOLLOWS]

DECLARANT:

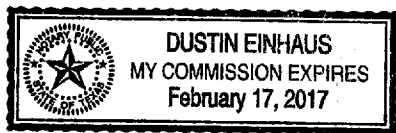
LHM BALCONES CREEK DEVELOPMENT, INC., a
Texas corporation

By: Jay Hanna
Name: JAY HANNA
Title: PRESIDENT

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on this 31 day of
December, 2012, by Jay Hanna,
President of LHM Balcones Creek Development, Inc., a Texas corporation,
on behalf of said corporation.

(Seal)



[Signature]
Notary Public Signature

ACKNOWLEDGED AND CONSENTED TO:

HM LEONARD, L.P., a Texas limited partnership

By: HM Balcones Creek GP, Inc.,
a Texas corporation, its General Partner

By: [Signature]
Printed Name: JAY HANNA
Title: PRESIDENT

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on this 31 day of December, 2012, by Jay Hanna, President of HM Balcones Creek GP, Inc., a Texas corporation, General Partner of HM Leonard, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.

(Seal)



[Signature]
Notary Public Signature

LHM BALCONES CREEK, L.P., a Texas limited partnership

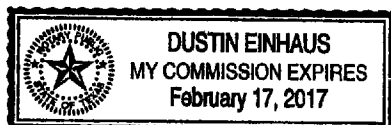
By: HM Balcones Creek GP, Inc.
a Texas corporation, its general partner

By: [Signature]
Printed Name: JAY HANNA
Title: PRESIDENT

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on this 31 day of December, 2012, by Jay Hanna, President of HM Balcones Creek GP, Inc., a Texas corporation, General Partner of LHM Balcones, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.

(Seal)



[Signature]
Notary Public Signature

EXHIBIT "A"

DESCRIPTION OF PROPERTY

**METES AND BOUNDS
DESCRIPTION OF A
6.242 ACRE TRACT OF LAND**

A Metes and Bounds description of a 6.242 acre (271,909 square feet) tract of land situated in the W.H. Hughes Survey No. 173, Abstract No. 340, C.B. 4707, Bexar County, Texas: being a portion of that certain 107.903 acre tract described in Instrument to American Bank of Texas recorded in Volume 14461, Page 2445 of the Bexar County Real Property Records; and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found situated in the southerly right-of-way line of George Beere Street (86 feet wide - Volume 9639, Page 104, Bexar County Deed and Plat Records) marking the northern-most northwest corner of that certain 139.004 acre tract described in Instrument to L & H Leasing Company, LTD., recorded in Volume 7111, Page 1967 of the Bexar County Real Property Records;

THENCE, along the common boundary of said 107.903 acre tract and said 139.004 acre tract the following two(2) courses and distances:

1. South 22°41'56" West, 660.72 feet to a 1/2-inch iron rod found for corner;
2. South 11°35'27" East, 23.66 feet to a point for corner;

THENCE, North 57°30'41" West, 619.54 feet to a point for corner;

THENCE, North 32°28'26" East, 2.71 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the right having a radius of 20.00 feet, a central angle of 9°26'19", a long chord bearing North 37°11'36" East, 3.29 feet, and a total arc length of 3.29 feet to a point of tangency;

THENCE, North 41°54'46" East, 11.40 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the right having a radius of 20.00 feet, a central angle of 7°17'38", a long chord bearing North 45°33'35" East, 2.54 feet, and a total arc length of 2.55 feet to a point of tangency;

THENCE, North 49°12'24" East, 11.60 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the left having a radius of 40.00 feet, a central angle of 16°43'58", a long chord bearing North 40°50'25" East, 11.64 feet, and a total arc length of 11.68 feet to a point of tangency;

THENCE, North 32°28'26" East, 59.28 feet to a point of curvature;

6.11.2012 

THENCE, along the arc of a tangent curve to the right having a radius of 389.00 feet, a central angle of 04°56'48", a long chord bearing North 34°56'51" East, 33.57 feet, and a total arc length of 33.58 feet to a 1/2-inch iron rod found marking a southerly corner of the platted street right-of-way of aforementioned George Beere Street;

THENCE, along the platted southerly street right-of-way line of said George Beere Street the following four(4) courses and distances:

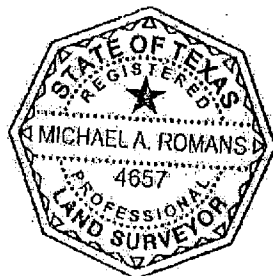
1. along the arc of a tangent curve to the right having a radius of 389.00 feet, a central angle of 37°13'49", a long chord bearing North 56°02'09" East, 248.34 feet, and a total arc length of 252.77 feet to a 1/2-inch iron rod found at a point of tangency;
2. North 74°39'03" East, 115.51 feet to a point of curvature;
3. along the arc of a tangent curve to the right having a radius of 657.00 feet, a central angle of 15°53'44", a long chord bearing North 82°35'55" East, 181.69 feet, and a total arc length of 182.27 feet to a 1/2-inch iron rod found at a point of tangency;
4. South 89°27'13" East, 194.93 feet to the POINT OF BEGINNING, containing 6.242 acres of land in Bexar County, Texas as shown on drawing filed under Job No. 746-001-00 in the office of Jones & Carter, Inc., San Antonio, Texas.

Note: All bearings and distances referenced herein are Texas State Plane Coordinate System grid, South Central Zone (NAD'83) as established by Global Positioning System (GPS). The grid to surface scale factor is: 1.000177.

JONES & CARTER, INC.

Michael A. Romans

Michael A. Romans
Registered Professional Land Surveyor #4657
Signature Date: 6.11.2012



AUSTIN DALLAS
HOUSTON BRENHAM
SAN ANTONIO ROSENBERG
COLLEGE STATION THE WOODLANDS

**METES AND BOUNDS
DESCRIPTION OF A
23.019 ACRE TRACT OF LAND**

Texas Board of Professional Engineers Registration No. E-439

A Metes and Bounds description of a 23.019 acre (1,002,700 square feet) tract of land situated in the W.H. Hughes Survey No. 173, Abstract No. 340, C.B. 4707, Bexar County, Texas; being a portion of that certain 107.903 acre tract described in instrument to American Bank of Texas recorded in Volume 14461, Page 2445 of the Bexar County Real Property Records; and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found situated in the southerly right-of-way line of George Beere Street (86 feet wide – Volume 9639, Page 104, Bexar County Deed and Plat Records) marking the northern-most northwest corner of that certain 139.004 acre tract described in instrument to L & H Leasing Company, LTD., recorded in Volume 7111, Page 1967 of the Bexar County Real Property Records;

THENCE, along the common boundary of said 107.903 acre tract and said 139.004 acre tract the following four(4) courses and distances:

1. South 22°41'56" West, 660.72 feet to a 1/2-inch iron rod found for corner;
2. South 11°35'27" East, 23.66 feet to the POINT OF BEGINNING of the herein described tract;
3. South 11°35'27" East, 1183.01 feet to a 1/2-inch iron rod found at an angle point;
4. South 11°46'38" East, 50.11 feet to a point for corner;

THENCE, South 78°15'05" West, 382.87 feet to a point for corner;

THENCE, South 86°54'38" West, 66.45 feet to a point for corner;

THENCE, North 08°28'14" West, 284.32 feet to a point for corner;

THENCE, in an easterly direction, along the arc of a non-tangent curve to the left having a radius of 375.00 feet, a central angle of 3°16'41", a long chord bearing North 79°53'26" East, 21.45 feet, and a total arc length of 21.45 feet to a point of tangency;

THENCE, North 78°15'05" East, 30.84 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the left having a radius of 10.00 feet, a central angle of 90°00'00", a long chord bearing North 33°15'05" East, 14.14 feet, and a total arc length of 15.71 feet to a point of tangency;

THENCE, North 11°44'55" West, 206.34 feet to a point for corner;

THENCE, North 76°24'49" West, 158.37 feet to a point for corner;

THENCE, North 84°35'45" West, 122.52 feet to a point for corner;

THENCE, North 04°20'47" West, 288.68 feet to a point for corner;

6.11.2012 *THL*

THENCE, North 02°33'09" West, 92.08 feet to a point for corner;

THENCE, North 12°23'04" West, 99.13 feet to a point for corner;

THENCE, North 41°29'30" West, 184.41 feet to a point for corner;

THENCE, North 81°16'09" West, 98.52 feet to a point for corner;

THENCE, North 81°16'09" West, 60.00 feet to a point for corner;

THENCE, in a northerly direction, along the arc of a non-tangent curve to the right having a radius of 530.00 feet, a central angle of 12°22'05", a long chord bearing North 14°54'54" East, 114.19 feet, and a total arc length of 114.41 feet to a point for corner;

THENCE, North 68°54'04" West, 183.81 feet to a point for corner;

THENCE, South 89°50'36" West, 46.75 feet to a point for corner;

THENCE, North 00°09'24" West, 336.70 feet to a point for corner;

THENCE, North 44°08'16" East, 47.26 feet to a point for corner;

THENCE, North 85°51'44" West, 43.47 feet to a 1/2-inch iron rod found marking an interior corner of the aforementioned 107.903 acre tract; said iron rod bears North 86°48'35" West, 30.00 feet to a 1/2-inch iron rod found marking the northeast corner of Scenic Loop Estates, plat of which is recorded in Volume 9510, Page 199 of the Bexar County Deed and Plat Records;

THENCE, along the boundary of said 107.903 acre tract and said 139.004 acre tract the following two(2) courses and distances:

1. North 01°41'59" East, 30.27 feet to a 1/2-inch iron rod found for corner in the southerly boundary of that certain 86.869 acre tract described in correction deed to Alamo Community College District recorded in Volume 12915, Page 801 of the Bexar County Real Property Records;
2. South 85°51'44" East, 479.34 feet along said southerly boundary to a 1/2-inch iron rod found marking the western-most corner of the aforesaid existing street right-of-way of George Beere Street;

THENCE, along the boundary of said existing street right-of-way of George Beere Street the following four(4) courses and distances:

1. South 57°31'34" East, 73.00 feet to a 1/2-inch iron rod found for corner;
2. North 32°28'26" East, 13.61 feet to a 1/2-inch iron rod found at a point of curvature;
3. along the arc of a tangent curve to the right having a radius of 402.00 feet, a central angle of 3°44'19", a long chord bearing North 34°20'36" East, 26.23 feet, and a total arc length of 26.23 feet to a 1/2-inch iron rod found for corner;

6.11.2012 TR

4. South 85°51'44" East, 15.44 feet to a 1/2-inch iron rod found for corner;

THENCE, in a southwesterly direction, along the arc of a curve to the left having a radius of 389.00 feet, a central angle of 4°56'48", a long chord bearing South 34°56'51" West, 33.57 feet, and a total arc length of 33.58 feet to a point of tangency;

THENCE, South 32°28'26" West, 59.28 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the right having a radius of 40.00 feet, a central angle of 16°43'58", a long chord bearing South 40°50'25" West, 11.64 feet, and a total arc length of 11.68 feet to a point of tangency;

THENCE, South 49°12'24" West, 11.60 feet to a point for corner;

THENCE, along the arc of a tangent curve to the left having a radius of 20.00 feet, a central angle of 7°17'38", a long chord bearing South 45°33'35" West, 2.54 feet, and a total arc length of 2.55 feet to a point of tangency;

THENCE, South 41°54'46" West, 11.40 feet to a point of curvature;

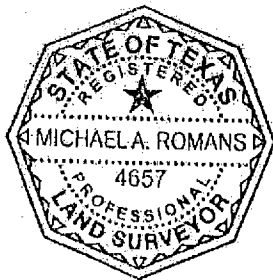
THENCE, along the arc of a tangent curve to the left having a radius of 20.00 feet, a central angle of 9°26'19", a long chord bearing South 37°11'36" West, 3.29 feet, and a total arc length of 3.29 feet to a point of tangency;

THENCE, South 32°28'26" West, 2.71 feet to a point for corner;

THENCE, South 57°30'41" East, 619.54 feet to the POINT OF BEGINNING, containing 23.019 acres of land in Bexar County, Texas as shown on drawing filed under Job No. 746-001-12 in the office of Jones & Carter, Inc., San Antonio, Texas.

Note: All bearings and distances referenced herein are Texas State Plane Coordinate System grid, South Central Zone (NAD'83) as established by Global Positioning System (GPS). The grid to surface scale factor is: 1.000177.

JONES & CARTER, INC.



Michael A. Romans

Michael A. Romans
Registered Professional Land Surveyor #4657
Signature Date: 6.11.2012

**METES AND BOUNDS
DESCRIPTION OF A
63.099 ACRE TRACT OF LAND**

Texas Board of Professional Engineers Registration No. F-439

A Metes and Bounds description of a 63.099 acre tract of land situated in the W.H. Hughes Survey No. 173, Abstract No. 340, C.B. 4707, Bexar County, Texas: being a portion of that certain 107.903 acre tract described in instrument to American Bank of Texas recorded in Volume 14461, Page 2445 of the Bexar County Real Property Records; containing a portion of that certain 137.848 acre tract described in instrument to BP Balcones Crossing, Ltd. recorded in Volume 12064, Page 2075 of the Bexar County Real Property Records; containing all of that certain 24.12 acre tract described in instrument to BP Balcones Crossing, Ltd. recorded in Volume 12515, Page 416 of the Bexar County Real Property Records; and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found situated in the southerly boundary of said 137.848 acre tract marking the northeast corner of said 24.12 acre tract and the northwest corner of that certain 42.333 acre tract described in instrument to Lucille E. Holman recorded in Volume 3836, Page 1913 of the Bexar County Real Property Records;

THENCE, along the boundaries of said 24.12 acre tract the following three(3) courses and distances:

1. South 03°06'00" East, 1277.85 feet along the westerly boundary of said 42.333 acre tract to a 1/2-inch iron rod found situated in the northerly boundary of Windwood Estates Subdivision, Unit 4, plat of which is recorded in Volume 7000, Page 72 of the Bexar County Deed and Plat Records;
2. South 89°49'09" West, 613.35 feet along the northerly boundary of said Windwood Estates to a 1/2-inch iron rod found at an angle point;
3. North 89°42'19" West, 229.24 feet along the northerly boundary of said Windwood Estates to a 1/2-inch iron rod found marking the southwest corner of said 24.12 acre tract;

THENCE, South 00°04'56" East, 1027.04 feet along the westerly boundary of said Windwood Estates Subdivision Unit 4 to a 1/2-inch iron rod (with cap stamped "Jones & Carter Inc.") set marking a southwesterly corner of said Windwood Estates Subdivision Unit 4 and the northwest corner of that certain 10.226 acre tract described in instrument to Mark G. Riser, recorded in Volume 11079, Page 1015 of the Bexar County Real Property Records;

THENCE, South 00°52'07" West, 660.37 feet along the westerly boundary of said 10.226 acre tract to a 1/2-inch iron rod found for corner in the northeasterly right-of-way line of Old Boerne Stage Road (width varies);

THENCE, North 57°08'34" West, 35.32 feet along said northeasterly right-of-way line to a 1/2-inch iron rod found marking the southeast corner of Scenic Loop Estates Subdivision, plat of which is recorded in Volume 9510, Page 199 of the Bexar County Deed and Plat Records;

THENCE, along the easterly boundary of said Scenic Loop Estates Subdivision the following five(5) courses and distances:

6.11.2012 TR

1. North 00°10'41" East, 1813.40 feet to a 1/2-inch iron rod (with cap stamped with "BROWN ENG") found at an angle point;
2. North 04°22'54" West, 425.84 feet to a 1/2-inch iron rod (with cap stamped with "BROWN ENG") found at an angle point;
3. North 00°21'02" East, 337.42 feet to a 1/2-inch iron rod found at an angle point;
4. North 03°57'05" East, 99.05 feet to a 1/2-inch iron rod (with cap stamped with "BROWN ENG") found at an angle point;
5. North 00°00'59" East, 2555.51 feet to 1/2-inch iron rod set marking the northeast corner of said Scenic Loop Estates Subdivision, situated in the southerly boundary of a 30 foot wide lane; said set rod bears North 86°48'35" West, 7.73 feet to a found 1/2-inch iron rod;

THENCE, South 86°48'35" East, 30.00 feet along the southerly boundary of said lane to a 1/2-inch iron rod found for corner;

THENCE, South 85°51'44" East, 43.47 feet to a point for corner;

THENCE, South 44°08'16" West, 47.26 feet to a point for corner;

THENCE, South 00°09'24" East, 336.70 feet to a point for corner;

THENCE, North 89°50'36" East, 46.75 feet to a point for corner;

THENCE, South 68°54'04" East, 183.81 feet to a point for corner;

THENCE, in a southerly direction, along the arc of a non-tangent curve to the left having a radius of 530.00 feet, a central angle of 12°22'05", a long chord bearing South 14°54'54" West, 114.19 feet, and a total arc length of 114.41 feet to a point for corner;

THENCE, South 81°16'09" East, 60.00 feet to a point for corner;

THENCE, South 81°16'09" East, 98.52 feet to a point for corner;

THENCE, South 41°29'30" East, 184.41 feet to a point for corner;

THENCE, South 12°23'04" East, 99.13 feet to a point for corner;

THENCE, South 02°33'09" East, 92.08 feet to a point for corner;

THENCE, South 04°20'47" East, 288.68 feet to a point for corner;

THENCE, South 84°35'45" East, 122.52 feet to a point for corner;

THENCE, South 76°24'49" East, 158.37 feet to a point for corner;

6.11.2012 *TRR*

THENCE, South 11°44'55" East, 206.34 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the right having a radius of 10.00 feet, a central angle of 90°00'00", a long chord bearing South 33°15'05" West, 14.14 feet, and a total arc length of 15.71 feet to a point of tangency;

THENCE, South 78°15'05" West, 30.84 feet to a point of curvature;

THENCE, along the arc of a tangent curve to the right having a radius of 375.00 feet, a central angle of 3°16'41", a long chord bearing South 79°53'26" West, 21.45 feet, and a total arc length of 21.45 feet to a point for corner;

THENCE, South 08°28'14" East, 284.32 feet to a point for corner;

THENCE, North 86°54'38" East, 66.45 feet to a point for corner;

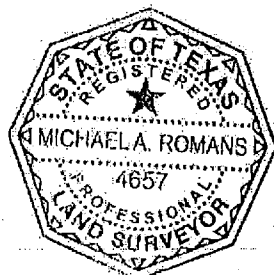
THENCE, North 78°15'05" East, 382.87 feet to a point for corner in the westerly boundary of that certain 139.004 acre tract described in instrument to L & H Leasing Company, LTD., recorded in Volume 7111, Page 1967 of the Bexar County Real Property Records;

THENCE, South 11°46'38" East, 602.56 feet along said westerly boundary to a 1/2-inch iron rod found marking the northwest corner of that certain 5 acre tract described in instrument to Eleanora A. Beutinagel recorded in Volume 7787, Page 161 of the Bexar County Deed Records;

THENCE, South 86°54'38" West, 593.08 feet along the northerly boundary of the aforementioned 42.333 acre tract described in instrument to Lucille E. Holman recorded in Volume 3836, Page 1913 of the Bexar County Real Property Records to the POINT OF BEGINNING, containing 63.099 acres of land in Bexar County, Texas as shown on drawing filed under Job No. 735-001-12 in the office of Jones & Carter, Inc., San Antonio, Texas.

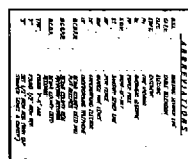
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JONES & CARTER, INC.

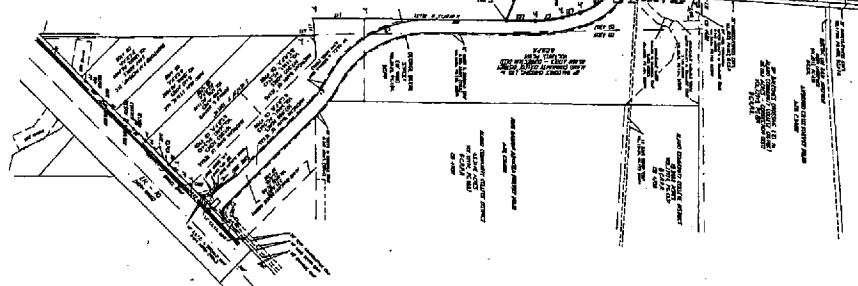


Michael A. Romans
Michael A. Romans
Registered Professional Land Surveyor #4657
Signature Date: 6.11.2012

the 1970s, the 1980s, and the 1990s. The 1970s were characterized by a strong emphasis on the environment, with the passage of the Clean Air Act, the Clean Water Act, and the Endangered Species Act. The 1980s saw a shift towards economic growth and deregulation, with the passage of the Reagan Tax Reform Act and the deregulation of the airline and trucking industries. The 1990s were marked by a focus on social issues, with the passage of the Americans with Disabilities Act and the Family and Medical Leave Act. The 2000s saw a renewed emphasis on the environment, with the passage of the Kyoto Protocol and the creation of the Environmental Protection Agency's Office of Global Change Research. The 2010s have been characterized by a focus on economic growth and infrastructure, with the passage of the Affordable Care Act and the construction of the Obama Expressway. The 2020s have seen a renewed emphasis on social issues, with the passage of the Equality Act and the creation of the Department of Housing and Urban Development's Office of Community Development. The 2030s are expected to see a continued focus on economic growth and infrastructure, with the construction of the Biden Expressway and the passage of the Infrastructure Investment and Jobs Act. The 2040s are expected to see a renewed emphasis on social issues, with the passage of the Equality Act and the creation of the Department of Housing and Urban Development's Office of Community Development. The 2050s are expected to see a continued focus on economic growth and infrastructure, with the construction of the Biden Expressway and the passage of the Infrastructure Investment and Jobs Act. The 2060s are expected to see a renewed emphasis on social issues, with the passage of the Equality Act and the creation of the Department of Housing and Urban Development's Office of Community Development. The 2070s are expected to see a continued focus on economic growth and infrastructure, with the construction of the Biden Expressway and the passage of the Infrastructure Investment and Jobs Act. The 2080s are expected to see a renewed emphasis on social issues, with the passage of the Equality Act and the creation of the Department of Housing and Urban Development's Office of Community Development. The 2090s are expected to see a continued focus on economic growth and infrastructure, with the construction of the Biden Expressway and the passage of the Infrastructure Investment and Jobs Act.



WILLIAM R. BROWN

[illegible][illegible][illegible]

24 MAR 1981
BALCONES CROSSING TRACTS 1, 2 & 3
ALTA / ACSM
LAND TITLE SURVEY OF THREE TRACTS
OF LAND LOCATED IN COUNTY BLOCK 4707
BEXAR COUNTY, TEXAS

JC JONES & CARTER, INC.
ENGINEERS • PLANNERS • SURVEYORS
Texas Board of Professional Engineers Registration No. F-439

DATE 12/18/78 BY SP7/SP8/SP9 CHECKED BY AMH
 CLASS SECRET BY SP7/SP8/SP9 DATE 12/18/78



LAND DEVELOPMENT ENVIRONMENTAL TRANSPORTATION WATER RESOURCES SURVEYING

FIELD NOTES

FOR

A 140.435 acre, or 6,117,343 square feet more or less, tract of land, being all of a called 139.004 acre tract, described in conveyance to L & H LEASING CO., LTD. in Special Warranty deed recorded in Volume 7111, Pages 1967-1971 of the Official Public Records of Real Property of Bexar County, Texas and all of a called 1.559 acre tract described in conveyance to L & H LEASING CO. in General Warranty Deed recorded in Volume 6082, Pages 1128-1131 of the Official Public Records of Real Property of Bexar County, Texas, out of the W.H. Hughes Survey No. 173, Abstract 340, County Block 4707, Bexar County, Texas. Said 140.435 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (CORS 1996), from the Texas Coordinate System established for the South Central Zone:

BEGINNING: At a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", on the north line of Lot 163 of the Windwood Estates Subdivision Unit 4 recorded in Volume 7000, Pages 72-73 of the Deed and Plat Records of Bexar County, Texas, a southwest corner of said called 139.004 acre tract, the southeast corner of a called 42.33 acre tract in Deed of Gift to Lucille E. Holman in Volume 3836, Pages 1913-1914 of the Official Public Records of Real Property of Bexar County, Texas, from which a found $\frac{1}{2}$ " iron rod, at the northeast corner of Axis Drive, a 60-foot right-of-way dedicated in said Windwood Estates Subdivision Unit 4, the northwest corner of said Lot 163 bears N 89°49'54" W, a distance of 19.53 feet;

THENCE: Along and with a west line of said called 139.004 acre tract, the east line of said called 42.333 acre tract, the following calls and distances:

N 00°01'03" E, a distance of 623.21 feet to a found $\frac{1}{2}$ " iron rod;

N 00°03'10" W, along and with a hog wire fence, at a distance of 300.0 feet passing the southeast corner of a 5 acre tract in Deed of Gift to Lucille E. Holman in Volume 3836, Pages 1913-1914 of the Official Public Records of Real Property of Bexar County, Texas, continuing for a total distance of 303.15 feet to a found fence post;

N 03°56'51" W, a distance of 414.88 feet to a found fence post, the northeast corner of said called 5 acre tract, an interior corner of said called 139.004 acre tract;

THENCE: S 86°09'00" W, along and with a south line of said called 139.004 acre tract, the north line of said called 5 acre tract, a distance of 521.31 feet to a found $\frac{1}{2}$ " iron rod, a southeast corner of a 107.903 acre tract recorded in Volume 14461, Pages 2445-2451 of the Official Public Records of Real Property of Bexar County, Texas;

- THENCE: Along and with the east line of said 107.903 acre tract, a west line of said called 139.004 acre tract, the following calls and distances:
N 11°46'48" W, a distance of 652.67 feet to a found ½" iron rod;
N 11°35'47" W, a distance of 1206.92 feet to a found ½" iron rod;
N 22°40'14" E, a distance of 661.19 feet to a found ½" iron rod, on the proposed south right-of-way line of George Beere, an 86-foot right-of-way, of the Balcones Commercial Unit 1 (Plat No. 070645), an approved, but unrecorded plat, an interior corner of said 107.903 acre tract, the northwest corner of said called 139.004 acre tract;
- THENCE: S 89°26'49" E, along and with the south right-of-way line of said proposed George Beere, a south line of said called 107.903 acre tract, a north line of said called 139.004 acre tract, a distance of 510.95 feet to a found ½" iron rod with a cap marked "Jones-Carter";
- THENCE: Departing the south right-of-way line of said proposed George Beere, along and with a south line of said called 107.903 acre tract, a north line of said called 139.004 acre tract, the following calls and distances:
S 89°21'59" E, a distance of 255.24 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";
S 89°28'03" E, at a distance of 155.73 feet passing a found ½" iron rod, continuing for a total distance of 500.00 feet to a found ½" iron rod, an angle point in a south line of said called 107.903 acre tract;
N 05°40'03" W, along an east line of said called 107.903 acre tract, a distance of 113.43 feet to a found ½" iron rod;

N 89°33'41" E, along and with a south line of said called 107.903 acre tract, at a distance of 109.2 passing a found $\frac{1}{2}$ " iron rod, the southwest corner of a 5.242 acre tract recorded in Volume 5716, Pages 1149-1153 of the Official Public Records of Real Property of Bexar County, Texas, a southeast corner of said called 107.903 acre tract, continuing along and with the south line of said 5.242 acre tract, the north line of said called 139.004 acre tract, at a distance of 414.5 feet passing the southwest corner of a 5.140 acre tract recorded in Volume 11121, Pages 2182-2188 of the Official Public Records of Real Property of Bexar County, Texas, the southeast corner of said 5.242 acre tract, continuing along and with the south line of said 5.140 acre tract, the north line of said called 139.004 acre tract, at a distance of 804.6 feet passing the southwest corner of a 3.663 acre tract recorded in Volume 12660, Pages 2160-2163 of the Official Public Records of Real Property of Bexar County, Texas, the southeast corner of said 5.140 acre tract, continuing along and with the south line of said 3.663 acre tract, the north line of said called 139.004 acre tract, for a total distance of 1238.41 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", the southwest corner of the aforementioned called 1.559 acre tract, the southeast corner of said 3.663 acre tract,

THENCE: N 46°00'11" E, along and with the northwest line of said called 1.559 acre tract, the southeast line of said 3.663 acre tract, a distance of 377.82 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", on the southwest right-of-way line of IH-10 West, a 300-foot right-of-way, the east corner of said 3.663 acre tract, the north corner of said called 1.559 acre tract;

THENCE: S 44°17'39" E, along and with the southwest right-of-way line of IH-10 West, the northeast line of said called 1.559 acre tract, a distance of 361.05 feet to a found $\frac{1}{2}$ " iron rod with a cap marked "Baker", at the intersection of the north line of a 20-foot Private Lane as shown on the Oak Hill Acres Subdivision an unrecorded plat referenced in Volume 5037, Pages 582-586 of the Deed Records of Bexar County, Texas and the southwest right-of-way line of said IH-10 West, the east corner of said called 1.559 acre tract;

THENCE: S 89°33'41" W, departing the southwest right-of-way line of IH-10 West, along and with the north line of said 20-foot Private Lane, the south line of said 1.559 acre tract, a distance of 372.35 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", the northwest corner of said 20-foot Private Lane and the northeast corner of said called 139.004 acre tract;

THENCE: Departing the south line of said called 1.559 acre tract, along and with the west line of said Oak Hill Acres Subdivision, an east line of said called 139.004 acre tract, the following calls and distances:

S 07°16'26" E, a distance of 687.83 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 06°46'56" E, a distance of 171.92 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 07°30'56" E, a distance of 549.13 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 18°57'26" E, a distance of 28.56 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 40°03'56" E, a distance of 32.50 feet to a found fence post, the southwest corner of Lot 12, Block 12 of said Oak Hill Acres Subdivision;

THENCE: N 89°48'35" E, along and with the south line of said Lot 12, a north line of said called 139.004 acre tract, a distance of 183.23 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", a northwest corner of Lot 91 of the Windwood Estates Subdivision recorded in Volume 6500, Page 234 of the Deed and Plat Records of Bexar County, Texas;

THENCE: S 07°12'13" E, along and with a west line of said Lot 91, an east line of said called 139.004 acre tract, a distance of 224.43 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" an interior corner of said Lot 91, a southeast corner of said called 139.004 acre tract;

THENCE: S 89°52'53" W, along and with the north line of said Windwood Estates Subdivision, a south line of said called 139.004 acre tract, a distance of 2066.55 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" the northwest corner of Lot 85 of said Windwood Estates Subdivision, an interior corner of said called 139.004 acre tract;

THENCE: Along and with the west line of said Windwood Estates Subdivision, an east line of said called 139.004 acre tract, the following calls and distances:

S 14°49'23" W, a distance of 321.71 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 14°13'23" W, a distance of 204.80 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 06°52'37" E, a distance of 49.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 13°06'37" E, a distance of 480.40 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 13°11'37" E, at a distance of 69.0 feet passing the southwest corner of said Windwood Estates Subdivision, a northwest corner of a 26.935 acre tract recorded in Volume 6710, Pages 1629-1633 of the Official Public Records of Real Property of Bexar County, Texas, continuing along and with the west line of said 26.935 acre tract, an east line of said called 139.004 acre tract, for a total distance of 600.00 feet to a found ½" iron rod;

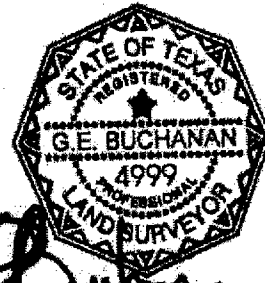
THENCE: Along and with the west line of said 26.935 acre tract, an east line of said called 139.004 acre tract, the following calls and distances:

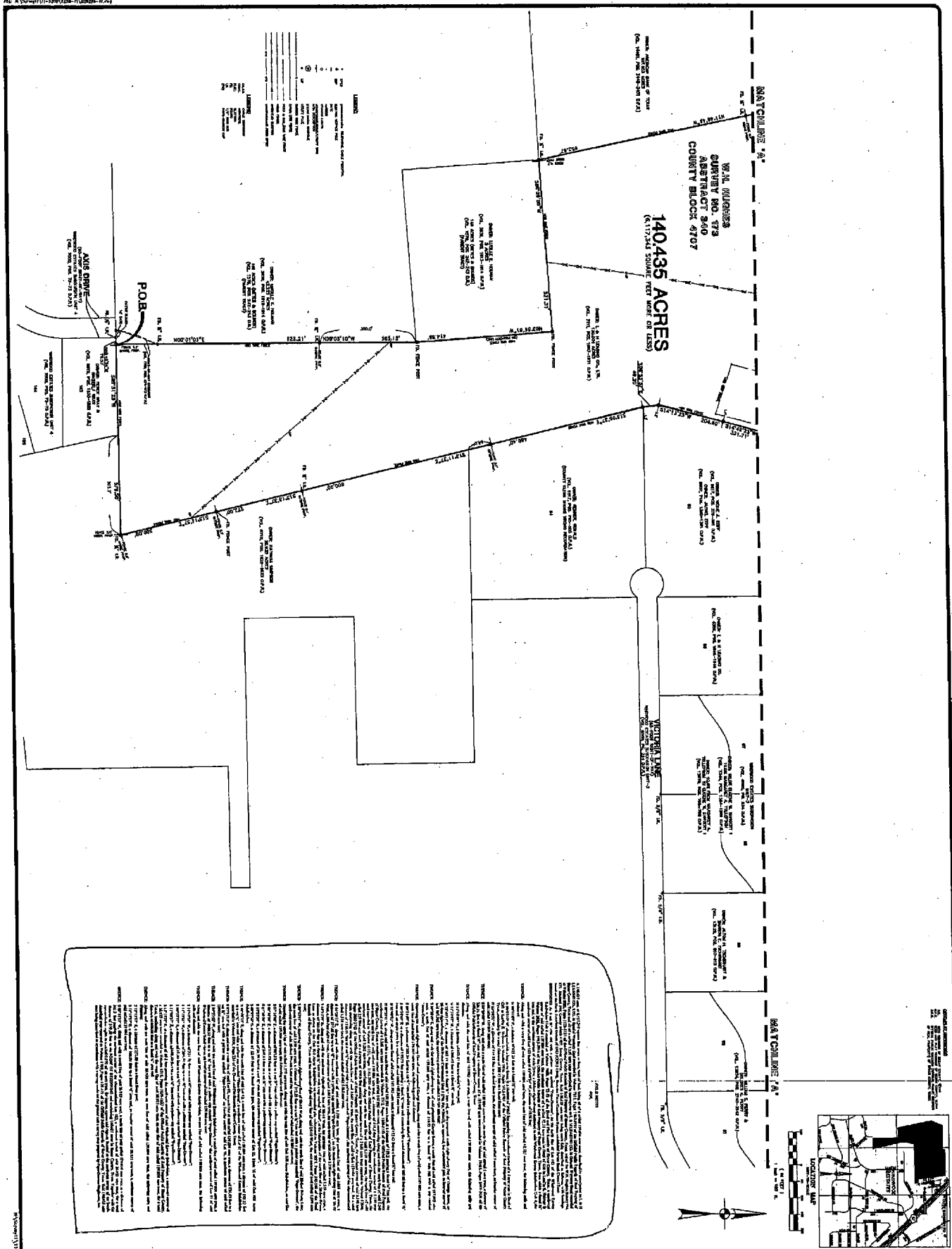
S 13°13'37" E, a distance of 272.00 feet to a found fence post;

S 13°14'37" E, a distance of 300.00 feet to a found ½" iron rod, an interior corner of said 26.935 acre tract, a southeast corner of said called 139.004 acre tract;

THENCE: S 89°31'23" W, along and with a north line of said 26.935 acre tract, a south line of said called 139.004 acre tract, at a distance of 303.2 feet passing the northeast corner of the aforementioned Lot 163, a northwest corner of said 26.935 acre tract, for a total distance of 579.50 feet to the POINT OF BEGINNING and containing 140.435 acres in Bexar County, Texas. Together with the non-exclusive rights to a called 0.070 of an acre tract, for ingress, egress and regress, located at the southwest corner of the herein described tract recorded in Volume 1769, Pages 471-473 of the Official Public Records of Bexar County, Texas. Said 140.435 acre tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: September 22, 2011
REVISED: January 27, 2012
JOB No.: 9228-11
DOC.ID.: N:\Survey11\11-9200\9228-11\WORD\9228-11FN.doc





LAND TITLE SURVEY
OF



**PAPE-DAWSON
ENGINEERS**

SEE EAST RAILSET | SAN ANTONIO TEXAS 78216 | PHONE 718.136, 7000
FAX 210.373.7070

TEXAS BOARD OF PROFESSIONAL ENGINEERS FOR REGISTRATION # 479
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS FOR REGISTRATION # 136680-28

REVIEWS:
 80-11-01 JAMES H. BOWMAN
 80-07-01 GEORGE W. ORLAND

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GERARD C. RICKHOFF
COUNTY CLERK
Fees \$284.00

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Gerard C. Rickhoff