



AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.  
Winstead, PC  
401 Congress Ave., Suite 2100  
Austin, Texas 78701  
Email: [rburton@winstead.com](mailto:rburton@winstead.com)

# BALCONES CREEK

## DEVELOPMENT AREA DECLARATION

### [BALCONES CREEK UNIT 2]

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

Cross reference to Balcones Creek Master Covenant, recorded as Document No. 20130055903 in the Official Public Records of Bexar County, Texas, and that certain Notice of Applicability of Balcones Creek Master Covenant, recorded as Document No. 20140099919 in the Official Public Records of Bexar County, Texas.

The terms and provisions of the aforementioned documents also apply to the Development Area encumbered by this Development Area Declaration.

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**DEVELOPMENT AREA DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
BALCONES CREEK [UNIT 2]**

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

**RECITALS**

**A.** This Development Area Declaration is filed with respect to Lots 1 through 28, Block 5, and Lots 1 through 10, Block 6, Balcones Creek Ranch, Unit 2, Enclave, a subdivision located in Bexar County, Texas, according to the map or plat (the "**Plat**") recorded in Document No. 20140086843, Official Records of Bexar County, Texas (the "**Development Area**"). HM Leonard Development, Inc. ("**HM**") is the owner of the Development Area and consents to the recordation of this Development Area Declaration by its execution of the same in the space provided herein.

**B.** Pursuant to that one certain Notice of Applicability of Balcones Creek Master Covenant, recorded as Document No. 20140099919 in the Official Public Records of Bexar County, Texas, the Development Area is subject to the terms and provisions of that certain Balcones Creek Master Covenant, recorded as Document No. 20130055903 in the Official Public Records of Bexar County, Texas (the "**Covenant**").

**A Development Area is a portion of Balcones Creek which is subject to the terms and provisions of the Covenant. A Development Area Declaration includes specific restrictions which apply to the Development Area, in addition to the terms and provisions of the Covenant.**

**C.** Declarant intends for this Development Area Declaration to serve as one of the "Development Area Declarations" permitted under the Covenant and desires that the Development Area described and identified in Recital A hereinabove will constitute one of the Development Areas which is permitted, contemplated and defined under the Covenant.

**NOW, THEREFORE**, it is hereby declared: (i) that all of the Development Area will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with the Development Area and will be binding upon all parties having right, title, or interest in or to the Development Area or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Development Area, or any portion thereof, 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; and (iii) that this Development Area

Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Covenant.

## ARTICLE 1 DEFINITIONS

Capitalized terms used but not defined in this Development Area Declaration shall have the meaning subscribed to such terms in the Covenant.

## ARTICLE 2 GENERAL RESTRICTIONS

All of the Development Area will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

**2.01 Use Restrictions.** The Development Area shall be used solely for single-family residential purposes. The Development Area may not be used for any other purposes without the prior written consent of the Declarant during the Development Period, and the Board after expiration of termination of the Development Period, which consent may be withheld by the Declarant of the Board, as applicable, in its sole and absolute discretion. No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of the Development Area, except an Owner or Resident may conduct business activities within a residence so long as: (i) such activity complies with all the applicable zoning ordinances (if any); (ii) participation in the business activity is limited to the Owner(s) or Resident(s) of a residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business within the Development, sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Development; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

**2.02 Rentals.** No portion of the Development Area may be used as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, or any similar purpose, but the primary residence constructed on a Lot may be leased for residential purposes for a lease term of no less than six (6) months. All leases shall be in writing. The Owner must provide to its lessee copies of the Documents. Notice of any lease, together with such additional information as may be required by the Board, must be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. All leases must be for the entire residence.

**2.03 Trash Containers.** Trash containers and recycling bins must be stored in one of the following locations:

- (i) inside the garage of the residence; or
- (ii) behind the residence in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent residence.

The Board shall have the right to specify additional locations in which trash containers or recycling bins must be stored.

**2.04 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Development Area except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Development Area. Motorcycles shall be operated in a quiet manner.

Parking of commercial vehicles or equipment, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than: (i) in enclosed garages; and (ii) behind a fence so as to not be visible from any other portion of the Development Area is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

Mobile homes are prohibited. Notwithstanding the foregoing, sales trailers or other temporary structures expressly approved by the Balcones Creek Reviewer shall be permitted.

**2.05 Outside Burning.** There will be no exterior fires, except that barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Balcones Creek Reviewer shall be permitted. No Owner will permit any condition upon its portion of the Development Area which creates a fire hazard or violates Applicable Law.

**2.06 Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Development Area (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner or Resident may keep on a Lot more than four (4) cats and dogs, in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Development Area other than within the residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Development Area. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Development Area, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Resident, upon written notice, may be required to remove the pet from the Development Area.

**2.07 Maintenance.** The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. An Owner's "entire Lot" shall include, without limitation, any portion of such Lot upon which a subdivision perimeter fence has been constructed, or any portion of such Lot between such subdivision perimeter fence and any boundary line of such Lot. The Declarant has reserved the right under the Covenant to designate a portion of any Lot or as a "Service Area". A Service Area designation may provide that the Association will assume responsibility for certain maintenance tasks otherwise allocated to an Owner (e.g., yard maintenance, including the front yard or the front and back yards). Nothing in this Section 2.07 will be construed to limit the Declarant or the Association's ability to designate Service Areas or

provide the maintenance services which would otherwise be the responsibility of an Owner. The Balcones Creek Reviewer, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section 2.07* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Balcones Creek Reviewer, in its sole discretion:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (vii) Keeping planting beds free from turf grass.
- (viii) Keeping sidewalks and driveways in good repair.
- (ix) Complying with all government, health and police requirements.
- (x) Repainting of Improvements.
- (xi) Repair of exterior damage, and wear and tear to Improvements.

**2.08 Antennae.** Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, may be erected, maintained or placed on a Lot without the prior written approval of the Balcones Creek Reviewer; provided, however, that:

(i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "**Permitted Antennas**") will be permitted subject to reasonable requirements as to location and screening as may be set forth in

rules adopted by the Balcones Creek Reviewer, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

**2.09 Location of Permitted Antennas.** A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Special Common Area, or any other portion of the Development Area. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Development Area, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the Balcones Creek Reviewer are as follows:

(i) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The Balcones Creek Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Balcones Creek Reviewer from time to time. Please contact the Balcones Creek Reviewer for the current rules regarding installation and placement.

**2.10 Signs.** No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the Balcones Creek Reviewer, except for:

(i) signs erected by the Declarant or erected with the advance written consent of the Declarant;

(ii) one small security service sign per Lot, provided that the sign has a maximum face area of two (2) square feet and is located no more than five (5) feet from the front elevation of the principal residence constructed upon the Lot;

(iii) permits as may be required by Applicable Law;

(iv) a religious item on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame), provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five (25) square inches;

(v) one (1) temporary "For Sale" or "For Lease" sign per Lot, provided that the sign will be limited to: (a) a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post; (b) an overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet; and (c) the sign must be removed within two (2) business days following the sale or lease of the Lot;

(vi) political signs may be erected provided the sign: (i) is erected no earlier than the 90<sup>th</sup> day before the date of the election to which the sign relates; (ii) is removed no later than the 10<sup>th</sup> day after the date of the election to which the sign relates; and (iii) is ground-mounted. Only one sign may be erected for each candidate or ballot item. In addition, signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are prohibited; and

(vii) a "no soliciting" sign near or on the front door to the principal residence constructed upon the Lot, provided, that the sign may not exceed twenty-five (25) square inches.

Except for signs which are erected by the Declarant or erected with the advance written consent of the Declarant, no sign may be displayed in the window of any Improvement located on a Lot.

**2.11 Flags – Approval Requirements.** An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**"). Only two (2) permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Balcones Creek Reviewer. Approval by the Balcones Creek Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("**Freestanding Flagpole**").

**2.12 Flags – Installation and Display.** Unless otherwise approved in advance and in writing by the Balcones Creek Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

- (i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;
- (ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height
- (iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');
- (iv) With the exception of flags displayed on Common Area or Special Common Area and any Lot which is being used for marketing purposes by a Homebuilder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
- (v) The display of a flag, or the location and construction of the flagpole must comply with Applicable Law, easements and setbacks of record;
- (vi) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;
- (vii) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;
- (viii) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and
- (ix) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

**2.13 Owner's Obligation to Maintain Street Trees.** Each Owner will be responsible, at such Owner's sole cost and expense, for maintaining mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the edge of the pavement of any adjacent public right-of-way, street or alley (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area has been assumed by the Association in a Recorded written instrument. Specifically, and not by way of limitation, each Owner, at such Owner's sole cost and expense, will be required to maintain, irrigate and replace any Street Trees located within the ST Landscape Area. No landscaping, including trees, may be removed from or installed within the ST Landscape Area without the advance written consent of the Board. In the event an Owner fails to properly and on a timely basis (both standards to be

determined by the Board in the Board's sole and absolute discretion) mow, replace, prune, and/or irrigate any landscaping, including trees, in such Owner's ST Landscape Area, such failure will constitute a violation of this Declaration and the Board will cause such landscaping, including trees, to be mowed, replaced, pruned and/or irrigated in a manner determined by the Board, in its sole and absolute discretion. If the Board causes such landscaping, including trees, to be mowed, replaced, pruned and irrigated, the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **EACH OWNER AND RESIDENT 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 2.13 INCLUDING ANY COST, LOSS, DAMAGE, 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" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

### ARTICLE 3 CONSTRUCTION RESTRICTIONS

**3.01 Construction of Improvements.** No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any portion of the Development Area unless approved in advance and in writing by the Balcones Creek Reviewer in accordance with the Covenant.

**3.02 Utility Lines.** Unless otherwise approved by the Balcones Creek Reviewer, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Development Area other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other structures.

**3.03 Garages.** All garages must be approved in advance of construction by the Balcones Creek Reviewer. Unless otherwise approved by the Balcones Creek Reviewer, Improvements on each Lot must contain a private, enclosed garage capable of housing at least two (2) automobiles. No carports or other open automobile storage units will be permitted. No garage may be permanently enclosed or otherwise used for habitation. The parking of vehicles in the yard of any Lot is not permitted.

**3.04 Fences; Sidewalks.** The fencing and sidewalk requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to all or a portion of the Development Area.

**3.05 Driveways.** The design, construction material, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Balcones Creek Reviewer. Driveways on corner lots abutting a cul-de-sac and another roadway must access off the cul-de-sac. No asphalt driveways are permitted.

**3.06 Height.** The height requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to all or a portion of the Development Area.

**3.07 Building Materials.** All building materials must be approved in advance by the Balcones Creek Reviewer, and unless otherwise approved by the Balcones Creek Reviewer, only new building materials (except for used brick) may be used for constructing any Improvements. No highly reflective finishes (other than glass, which may not be mirrored) may be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

**3.08 Masonry Requirements.** The masonry requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to all or a portion of the Development Area.

**3.09 Square Footage.** The square footage requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to all or a portion of the Development Area.

**3.10 Compliance with Setbacks.** The setback requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to the Development Area.

**3.11 HVAC Location.** The HVAC location requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to all or a portion of the Development Area.

**3.12 Alteration or Removal of Improvements.** Any construction, other than normal maintenance or exterior painting, which materially alters the exterior appearance of any

Improvement, or the removal of any Improvement may be performed only with the prior written approval of the Balcones Creek Reviewer.

**3.13 Drainage.** There may be no interference with the established drainage patterns over any of the Development Area, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Balcones Creek Reviewer. Plans submitted to the Balcones Creek Reviewer for approval must indicate thereon an erosion control plan to be instituted during the construction of any residence on the Lot. The Owner of the Lot will be obligated to maintain and keep such approved erosion controls in good condition and repair. The erosion controls must be removed when the residence constructed upon the Lot is capable of occupancy for residential purposes.

**3.14 Construction Activities.** This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development Area. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Balcones Creek Reviewer in its sole good faith judgment, the Balcones Creek Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development Area, then the Balcones Creek Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

**3.15 Sight Distance at Intersection.** No fence, wall, hedge, or planting that obstructs sight lines at elevations between two feet and nine feet above the roadway may be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point thirty feet (30') from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines as extended. The same sight-line limitations will apply on any Lot within the triangular area formed by the street line, the driveway or alley line and a line connecting them at a point ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. All tree foliage within such distances of intersections must be maintained to meet the sight-line requirements set forth above. Notwithstanding the foregoing or anything in this Declaration to the contrary, all sight distances required by any applicable governmental authority must be complied with.

**3.16 Roofing.** The roofing requirements for each residence constructed on a Lot are set forth in Design Guidelines applicable to all or a portion of the Development Area. In

addition, roofs of buildings may be constructed with “**Energy Efficiency Roofing**” with the advance written approval of the Balcones Creek Reviewer. For the purpose of this *Section 3.16*, “Energy Efficiency Roofing” means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities. The Balcones Creek Reviewer will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Documents. In conjunction with any such approval process, the Owner should submit information which will enable the Balcones Creek Reviewer to confirm the criteria set forth in this *Section 3.16*. Any other type of roofing material shall be permitted only with the advance written approval of the Balcones Creek Reviewer.

**3.17 Swimming Pools.** Requirements pertaining to swimming pools are set forth in Design Guidelines applicable to all or a portion of the Development Area.

**3.18 Solar Energy Device.** During the Development Period this *Section 3.18* does not apply and the Declarant must approve in advance and in writing the installation of any solar energy device or apparatus (a “**Solar Energy Device**”). Until expiration or termination of the Development Period, the Declarant may prohibit the installation of any Solar Energy Device. After expiration or termination of the Development Period, Solar Energy Devices may be installed with the advance written approval of the Balcones Creek Reviewer.

(a) **Application.** To obtain Balcones Creek Reviewer approval of a Solar Energy Device, the Owner shall provide the Balcones Creek Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the “**Solar Application**”). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 6* of the Covenant.

(b) **Approval Process.** The Balcones Creek Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 6* of the Covenant. The Balcones Creek Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 3.18(c)* below **UNLESS** the Balcones Creek Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.18(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Development by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The Balcones Creek Reviewer’s right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to

the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Balcones Creek Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

- (i) The Solar Energy Device must be located on the roof of the residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the residence, the Balcones Creek Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the Balcones Creek Reviewer. If the Owner desires to contest the alternate location proposed by the Balcones Creek Reviewer, the Owner should submit information to the Balcones Creek Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.
- (ii) If the Solar Energy Device is mounted on the roof of the principal residence located on the Owner's Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

**3.19 Rainwater Harvesting Systems.** Rain barrels or rainwater harvesting systems (a "Rainwater Harvesting System") may be installed with the advance written approval of the Balcones Creek Reviewer.

(a) Application. To obtain Balcones Creek Reviewer approval of a Rainwater Harvesting System, the Owner shall provide the Balcones Creek Reviewer with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer,

and photograph or other accurate depiction (the “**Rain System Application**”). A Rain System Application may only be submitted by an Owner.

(b) Approval Process. The decision of the Balcones Creek Reviewer will be made in accordance with *Article 6* of the Covenant. Any proposal to install a Rainwater Harvesting System on property owned by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Balcones Creek Reviewer, each Rain System Application and each Rainwater Harvesting System to be installed in accordance therewith must comply with the following:

- (i) The Rainwater Harvesting System must be consistent with the color scheme of the residence constructed on the Owner’s Lot, as reasonably determined by the Balcones Creek Reviewer.
- (ii) The Rainwater Harvesting System does not include any language or other content that is not typically displayed on such a device.
- (iii) The Rainwater Harvesting System is in no event located between the front of the residence constructed on the Owner’s Lot and any adjoining or adjacent street.
- (iv) There is sufficient area on the Owner’s Lot to install the Rainwater Harvesting System, as reasonably determined by the Balcones Creek Reviewer.
- (v) If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, or another Owner’s Lot, the Balcones Creek Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. See *Section 3.19(d)* for additional guidance.

(d) Guidelines. If the Rainwater Harvesting System will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, or another Owner’s Lot, the Balcones Creek Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System. Accordingly, when submitting a Rain System Application, the application should describe methods proposed by the Owner to shield the Rainwater Harvesting System from the view of any street, common area, or another Owner’s Lot. When reviewing a Rain System Application for a Rainwater Harvesting System that will be installed on or within the side yard

of a Lot, or would otherwise be visible from a street, the Common Area, Special Common Area, or another Owner's Lot, any additional requirements imposed by the Balcones Creek Reviewer to regulate the size, type, shielding of, and materials used in the construction of the Rainwater Harvesting System, may not prohibit the economic installation of the Rainwater Harvesting System, as reasonably determined by the Balcones Creek Reviewer.

**3.20 Xeriscaping.** As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("Xeriscaping") upon written approval by the Balcones Creek Reviewer. All Owners implementing Xeriscaping shall comply with the following:

(a) Application. Approval by the Balcones Creek Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Balcones Creek Reviewer for Xeriscaping, the Owner shall provide the Balcones Creek Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Balcones Creek Reviewer is not responsible for: (i) errors or omissions in the Xeriscaping Application submitted to the Balcones Creek Reviewer for approval; (ii) supervising installation or construction to confirm compliance with an approved Xeriscaping Application or (iii) the compliance of an approved application with Applicable Law.

(b) Approval Conditions. Unless otherwise approved in advance and in writing by the Balcones Creek Reviewer, each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

- (i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Balcones Creek Reviewer. For purposes of this *Section 3.20*, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the Balcones Creek Reviewer determines that: a) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or 2) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot.

- (ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over twenty percent (20%) of such Owner's front yard or twenty percent (20%) of such Owner's back yard.
- (iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the Balcones Creek Reviewer.

(c) Process. The decision of the Balcones Creek Reviewer will be made within a reasonable time, or within the time period otherwise required by the principal deed restrictions which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this *Section 3.20* when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Balcones Creek Reviewer, installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Balcones Creek Reviewer may require the Owner to: (i) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (ii) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the Balcones Creek Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

#### ARTICLE 4 DEVELOPMENT

**4.01 Addition of Land.** Declarant may, at any time and from time to time, add additional portions of the Property to the Development Area, upon the filing of a notice as hereinafter described, such portions of the Property will be considered part of the Development Area for purposes of this Development Area Declaration, and such portions of the Property will be subject to the terms, covenants, conditions, restrictions and obligations set forth in this Development Area Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Development Area Declaration will be the same with respect to such added land

as with respect to the land originally covered by this Development Area Declaration. To add land to the Development Area, Declarant will be required only to Record a notice of addition of land (which notice may be contained within any notice of applicability filed pursuant to Section 9.05 of the Covenant) containing the following provisions:

- (A) A reference to this Development Area Declaration, which will include the recordation information thereof;
- (B) A statement that such land will be considered a part of the Development Area for purposes of this Development Area Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Development Area Declaration will apply to the added land; and
- (C) A legal description of the added land.

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

- (A) A reference to this Development Area Declaration, which will include the recordation information thereof;
- (B) A statement that the provisions of this Development Area Declaration will no longer apply to the withdrawn land; and
- (C) A legal description of the withdrawn land.

## **ARTICLE 5 GENERAL PROVISIONS**

**5.01 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Development Area Declaration will run with and bind the Development Area, 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 Development Area Declaration is Recorded, and continuing through and including January 1, 2067, after which time this Development Area Declaration 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 an amendment as contemplated in this *Section 5.01*, 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 5.01* to the contrary, if any provision of this Development Area Declaration 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.

**5.02 Amendment.** This Development Area Declaration may be amended or terminated by the Recording of an instrument setting forth the amendment executed and acknowledged by (i) the 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 5.02*, it being understood and agreed that any such amendment must be approved by a vote of the Members, with each Member casting their vote individually.

**5.03 Notices.** Any notice permitted or required to be given by this Development Area Declaration must be in writing and may be delivered either personally or by mail, or as otherwise 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.

**5.04 Interpretation.** The provisions of this Development Area Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Development Area Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Development Area Declaration will be construed and governed under the laws of the State of Texas.

**5.05 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.

**5.06 Assignment of Declarant's Rights.** Notwithstanding any provision in this Development Area Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Development Area Declaration 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, and duties hereunder.

**5.07 Enforcement and Nonwaiver.** Except as otherwise provided herein, any Owner, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Development Area Declaration. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of this Development Area Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Development Area Declaration and subject to all of the enforcement procedures set forth herein. The failure to enforce any provision of the Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Documents.

**5.08 Construction.** The provisions of this Development Area Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Development Area Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

*[SIGNATURE PAGE FOLLOWS]*

EXECUTED to be effective the 16 day of June, 2014.

**DECLARANT:**

**LHM BALCONES CREEK DEVELOPMENT, INC.,** a  
Texas corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

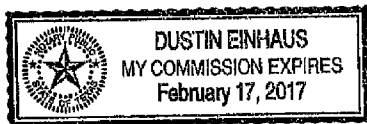
Title: \_\_\_\_\_

Day Hanna  
DAY HANNA  
PRESIDENT

THE STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on this 16 day of June, 2014, by Day Hanna, President of LHM Balcones Creek Development, Inc., a Texas corporation, on behalf of said corporation.

(Seal)



\_\_\_\_\_  
Notary Public Signature

ACKNOWLEDGED AND AGREED:

HM LEONARD DEVELOPMENT, INC.,  
a Texas corporation

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

THE STATE OF TEXAS                   §  
COUNTY OF Travis                   §

This instrument was acknowledged before me on this 16 day of June,  
2014, by Jay Hanna, President of HM Leonard  
Development, Inc., a Texas corporation, on behalf of said corporation.

(Seal)



[Signature]  
Notary Public Signature

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*Gerard C. Rickhoff*