

**DECLARATION OF
COVENANTS, CONDITIONS, & RESTRICTIONS
FOR BERRY CREEK SECTION FIVE, PHASE TWO**

KB HOME Lone Star Inc., a Texas corporation, being referred to herein as "**Declarant**", is the owner of all lots which are to be made subject to these Covenants, Conditions and Restrictions ("**CCR's**"), the same being all of the lots in BERRY CREEK SECTION FIVE, PHASE TWO (the "**Subdivision**") is a subdivision in Williamson County, Texas, according to the plat (the "**Plat**") recorded in Document No. 2014013881 in the Official Public Records of Williamson County Texas, SAVE AND EXCEPT Lot 15, Block E and Lot 24, Block F in the Subdivision. All lots subject to these CCR's are referred to herein as the "**Property**". Declarant intends to convey, and will convey, portions of the Property subject to these protective covenants, conditions, restrictions, easements, associations and charges hereafter collectively referred to as the "**CCR's**", "**Restrictions**" or this "**Declaration**". Future buyers and owners of lots in the Subdivision are referred to below collectively as "**Owners**" and singularly as "**Owner**", which include their legal representatives, heirs, successors, and assigns.

THEREFORE, it is declared that the Property shall be held, sold, and conveyed subject to the following easements, covenants, conditions, charges, and restrictions, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding upon any and all persons having any right, title, or interest in or to the Property.

I. PURPOSE

With the exception of Lot 15, Block E and Lot 24, Block F in the Subdivision, all lots in the Subdivision are hereby encumbered by the covenants, conditions, restrictions, easements, and charges in order to facilitate development of the Property.

II. ARCHITECTURAL CONTROL

A. **ARCHITECTURAL CONTROL COMMITTEE.** An Architectural Control Committee (the "**Committee**") shall be designated and composed of three (3) members. Until the expiration or termination of the "**Development Period**," whose duration shall last until Declarant no longer owns all or any portion of the Property, the Committee shall serve at the pleasure of the Declarant, its successors and assigns, and a member of the Committee may resign or be removed by Declarant for any reason or for no reason at all. Upon expiration or termination of the Development Period, the Board of Directors (the "**Board**") of the Berry Creek (Austin) Homeowners Association, Inc. (the "**Association**") shall be entitled to appoint, remove and replace all members of the Committee.

At any time, without regard to whether Declarant owns any lots in the Subdivision, Declarant may transfer to the Board the authority and responsibility for designation and removal of members of the Committee. Declarant shall give notice of such election to transfer by filing a Notice of Transfer in the office of the County Clerk of Williamson County, Texas.

B. **SUBMISSION & APPROVAL OF PLANS.** Every Owner of a lot, other than Declarant, who intends to build improvements on it shall deliver a complete set of construction plans and specifications (the "Plans") to the Committee at 10800 Pecan Park Blvd., Suite 200, Austin, Texas 78750, or such other address as may be designated by the Committee, not less than thirty (30) days prior to the date construction on a lot is to be commenced. Except for improvements constructed by Declarant, no structure or improvement (including, but not limited to, buildings, fences, walls, landscaping, pools, driveways, or site clearing) shall commence or be placed or altered on any lot until the Plans have been approved in writing by a majority of the members of the Committee. The Plans shall include all architectural and engineering plans, plus: information on exterior materials, colors, and elevation (including roof type and color); a drainage plan; site plan showing the location of every proposed structure or improvement; a landscaping plan; a driveway construction plan; and any other information or documents which may be required by the Committee. Each site plan shall be accompanied by a written certification by a registered professional engineer to the effect that the site plan conforms to requirements of this Declaration and of the recorded subdivision plat. In regard to construction which does not involve the construction or substantial remodeling or rebuilding of a residence, the Committee may, in its sole discretion, accept submission of fewer than all of the foregoing materials. The Committee may postpone its review of the Plans pending receipt of any information or materials which the Committee, in its sole discretion, may require. Copies of the Plans may be retained by the Committee until the subdivision is built out in its entirety. The Committee may refuse to approve the Plans on any grounds which, in the sole and absolute discretion of the Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

It is specifically understood and provided that approval by the Committee of any Plans, or components thereof, shall not constitute a certification or assurance of compliance with this Declaration, the subdivision Plat, or applicable law. The full burden of responsibility for compliance with all such requirements shall at all times be and remain upon the Owner.

C. **ADOPTION OF RULES & REGULATIONS.** The Committee shall have the authority to adopt, and to amend from time to time, such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or appropriate for the performance of its duties hereunder.

D. **ACTION OF THE COMMITTEE.** The vote of the majority of all of the members of the Committee shall constitute an act of the Committee. The Committee may, by resolution, unanimously adopted in writing, designate one or two of its members, or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Committee, except the granting of variances.

E. **FAILURE TO ACT.** In the event that Plans are submitted to the Committee as provided above, and the Committee shall fail either to approve or reject the Plans within thirty (30) days following the submission of all Plans required by the Committee, no approval by the Committee shall be required, and approval of the Plans shall be presumed; provided, however,

that such 30-day period shall not begin to run until all information required by the Committee to assist the Committee in its review has been received. Any failure of the Committee to act upon a request for a variance, however, shall not be deemed a consent to the variance, and the Committee's written approval of all requests for variances shall be required.

F. **VARIANCES.** The Committee may grant a variance from compliance with any of the provisions of this Declaration or any supplemental declaration, when, in the opinion of the Committee, in its sole and absolute discretion, the variance will not be adverse to the overall development plan for the Property, and the variance is justified due to visual or aesthetic consideration or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Committee. The granting of a variance shall not operate to waive or amend any of the terms and provisions of this Declaration or any supplemental declaration for any purpose except as to the particular property and in the particular instance covered by the variance. A variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration.

G. **DURATION OF APPROVAL.** The approval or consent of the Committee of any Plans, whether by action or inaction, and any variances granted by the Committee, shall be valid for a period of three (3) months only, unless construction in accordance with the Plans or variance is not commenced on a lot within that 3-month period, the Owner shall be required to re-submit the Plans or the request for a variance to the Committee. The Committee shall then have the authority to re-evaluate the Plans or request in accordance with this Article and may, in addition, consider any changes in circumstances which may have occurred since the time of the original approval.

H. **NO WAIVER FOR FUTURE APPROVALS.** The approval of the Committee to any Plans or variance request shall not be deemed a waiver of any right to withhold approval or consent as to any other Plans or variance request, or other matter whatever, nor shall the approval or consent be deemed a precedent for future approvals by the Committee.

I. **NON-LIABILITY OF COMMITTEE MEMBERS.** Neither the Committee nor any member thereof, shall be liable to any Owner or to any other person for any loss, damage, or injury arising out of the performance or non-performance of the Committee's rights and duties under this Declaration.

III. USE RESTRICTIONS

A. **LAND USE.** Except as may be specifically provided elsewhere in this Declaration, all lots of the Property shall be used for single family residential purposes only, and no building or improvement shall be erected, altered, placed, used, or permitted to remain on any lot except as authorized under this Declaration. Only one (1) residence shall be erected on a lot. No house may be used as a model home, without prior written consent of the Committee.

B. DWELLING SIZE. Any dwelling of a single-story design shall contain a minimum of 1,750 square feet of air-conditioned floor area, exclusive of all porches, garages, decks, patios, breeze ways, terraces, and balconies. Any dwelling of two-story design constructed on any lot shall contain a minimum of 2,250 square feet of air-conditioned floor area, exclusive of all porches, garages, decks, patios, breeze ways, terraces, and balconies. No dwelling shall exceed two (2) stories in height. The Committee may, in its sole discretion grant a variance of up to 250 square feet from the minimum sizes set forth herein.

C. MASONRY REQUIREMENTS. "Masonry Veneer" means brick, stone, or stucco veneer construction. Masonry Veneer does not include hardiboard, hardiboard shingles, or hardiboard lap siding. However, hardiplank in lieu of Masonry Veneer may be used for side and rear gables.

1. Lots Backing to Golf Course: shall be constructed of one hundred percent (100%) Masonry Veneer construction, exclusive of areas over roof not supported by Masonry Veneer below, roofs, eaves, dormers, soffits, windows, doors, gables, garage doors, decorative trim, and trimwork.

2. All Other Lots: Overall, fifty percent (50%) Masonry Veneer construction, exclusive of areas over roof not supported by Masonry Veneer below, roofs, eaves, dormers, soffits, windows, doors, gables, garage doors, decorative trim, and trimwork. First floor front and side elevations shall be constructed of one-hundred percent (100%) Masonry Veneer. The front façade of the second floor of all houses shall be one-hundred percent (100%) Masonry Veneer construction, exclusive of areas over roof not supported by Masonry Veneer below, roofs, eaves, dormers, soffits, windows, doors, gables, garage doors, decorative trim, and trimwork. Second floor sides of these houses shall have Masonry Veneer turn the corner and return down the sides a minimum of two (2) feet, unless the sidewall is over a roof.

3. All corner lots to be 100% masonry on sides facing street.

4. With respect to chimneys, if the chimney or fireplace chase is located on the side of the house, it shall be of masonry veneer construction. If the chimney is internal, it is not required to be of masonry veneer construction.

D. ROOFS. Roofs shall be constructed of dimensional shingles with at least a 30 year warranty.

E. FOUNDATIONS. Not more than three feet (3 ft.) of vertical surface of concrete slab of any dwelling shall be exposed to view from any public street or adjacent lot.

F. BUILDING SETBACKS AND STREET FACINGS. No building or other structure or improvement (excluding fences and landscaping) shall be located on any lot nearer to the property line than the building set back lines as indicated on the Plat. Variations from these requirements may be granted in individual cases where tract size or topography make these

requirements impractical but any such variation must have the prior written approval of the Committee.

INHERENT RISKS OF OWNERSHIP OF PROPERTY ON OR NEAR A GOLF COURSE. EACH OWNER ACKNOWLEDGES THE EXISTENCE OF CERTAIN HAZARDS AND RISKS ("RISKS") THAT ACCOMPANY LIVING IN A COMMUNITY WITH A GOLF COURSE. SPECIFICALLY, SERIOUS INJURY OR DAMAGE TO OWNERS, THEIR FAMILIES, GUESTS, INVITEES, LICENSEES, PETS, AND PROPERTY CAN OCCUR AS A RESULT OF SUCH RISKS AND ACTIVITIES CONDUCTED ON OR NEAR THE GOLF COURSE, ITS PRACTICE AREAS OR RELATED AMENITIES DUE TO ERRANT GOLF SHOTS, IMPROPER GOLF CART USAGE, AND OTHER ACTIVITIES ASSOCIATED WITH THE GAME OF GOLF AND ITS RELATED ACTIVITIES. BY PURCHASING A LOT THAT IS SUBJECT TO THESE RESTRICTIONS, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH RISKS EXIST, THAT THE OWNER ASSUMES SUCH RISKS BY PURCHASING A LOT, AND NEITHER DECLARANT NOR ITS AGENTS, REPRESENTATIVES, AND SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY INJURY, LOSS, OR DAMAGE TO ANY PERSON SUSTAINED OR INCURRED AS A RESULT OF SUCH GOLF COURSE ACTIVITIES.

G. GARAGES & DRIVEWAYS & SIDEWALKS

1. Garages. All garages shall comply with all restrictions, covenants, conditions, and limitations on use provided for other improvements in the subdivision, shall be suitable for not less than two (2) automobiles, shall consist of enclosed structures and no carports shall be permitted on any lot. No garage may be enclosed as living area without first obtaining written approval from the Committee.

2. Driveways. All driveways shall be constructed of concrete, washed pebble or paving stones; no asphalt driveways shall be permitted.

H. MAILBOXES. All mailboxes and their stands must be of a design and construction that is approved by the Committee.

I. UNFINISHED STRUCTURES. No house or other structure shall remain unfinished for more than 180 days after the foundation has been commenced. No building materials of any kind shall be placed or stored on a lot until the Owner is ready to commence construction.

J. PROHIBITED STRUCTURES. No tent, shack, shed, carport, barn, or other building, or structure of a temporary character, shall be erected or used on any lot at any time, either temporarily or permanently. No structure erected elsewhere (including, but not limited to, existing houses and prefabricated structures) shall be moved on to any lot. No house trailer or mobile home shall be placed on any lot.

K. VEHICLES, TRAILERS, & BOATS. No bus, semi-trailer, tractor, machinery, equipment, truck larger than 1-ton pickup, boat, trailer, or recreational vehicle of any type shall

be kept, parked, placed, maintained, constructed, or repaired on or in the street, or in the driveway in front of the house on any lot, except for construction and repair vehicles during the period of construction on a lot. No motor vehicle of any type shall be constructed or repaired on the street or on any lot that is visible from any street or neighboring property.

Motor homes, recreational house trailers, horse trailers, campers, boats, boat trailers, trailer of any type, and recreational vehicles of all types which are kept on a lot, shall be kept within a garage and not be visible from neighboring property or from streets or access roads, and shall never be used as a temporary or permanent dwelling. Such vehicles may not be kept, placed, or maintained on any undeveloped lot at any time. No motorized vehicles of any kind shall be operated in any manner which is dangerous, noisy, or creates a nuisance.

L. PLUMBING, BUTANE & FUEL TANKS, AND WATER SOFTENERS. All residences shall be equipped with approved sanitary plumbing fixtures. Plumbing installation shall meet the requirements of the National Plumbing Code, and the City of Georgetown Building Code. No butane or fuel tank or other structure or facility for the storage of combustible fuels shall be placed or maintained on any lot unless it is underground (except for small tanks used as part of backyard grills). All water purifiers and softeners must be located within the garage or the dwelling, and must not be visible from neighboring lots.

M. DUMPING, RUBBISH, GARBAGE, & STORAGE. No rubbish, trash, junk, ashes, scrap, building materials, in operative vehicles, or other unsightly storage of personal property is allowed on any portion of any lot. Trash, garbage, and other waste shall be stored in "animal-proof" sanitary containers. All trash cans and other equipment for storage of trash materials shall be kept clean and shall not be visible from the street except on appropriate trash pickup days.

N. ANTENNAE, SATELLITE DISHES. No exterior radio or television antennae, aerial or satellite dish shall be erected or maintained in such a manner as to be visible from any adjoining lot or roadway and none shall be installed until the location is approved by the Architectural Committee. This section is limited by federal law and regulation relating to such devices.

O. CLOTHESLINES. No clotheslines shall be constructed, placed, erected, or used on any lot.

P. POLES, LIGHTS, FLAGPOLES. No poles, exterior overhead lights, flagpoles, or other similar structures, shall be constructed or maintained upon any lot without prior consent of the Committee. This shall not be construed to prohibit attractive landscaping lighting or security lighting that does not intrude on neighboring lots.

Q. WINDOW AIR-CONDITIONERS. No window, roof or wall-type air-conditioner that is visible from any public street shall be used, placed, or maintained on or in any dwelling.

R. SOLAR. All solar panels or other solar collection devices must be constructed or added as an integral part of the architectural design of a dwelling, and their design and installation require the approval of the Committee.

S. FENCES, WALKWAYS, AND SIDEWALKS. All fences are subject to the prior written approval of the Committee. Except as may be otherwise approved by the Committee, wood fencing only shall be used along the back and side property lines; however, for lots on, abutting or adjacent to the Golf Course (as described below), if fencing is erected, such fencing shall be metal tubular fencing along the back and side property lines.

T. WINDOWS. No reflective material may be used on or in windows which face to the front or the side of any lot.

U. LANDSCAPING. "Landscaping" means any modification to a lot, including but not limited to any berming, irrigation systems, landscape subsurface drainage systems, paving, nonstructural retaining walls, and introduced vegetation. The front yard and front side yard of all lots, from the front property line to the front fence of the house, shall be fully sodded or planted with St. Augustine, Bermuda, Prairie Buffalo Grass or other sod approved by the Committee and at least two (2) trees shall be planted in each front yard of each lot prior to the occupancy of the residence located on the lot (the "Required Landscaping"). The entire front and side yard must be on an automatic, underground sprinkler system; irrigation for other yard areas on interior lots only is optional and subject to the prior approval of the Committee. Full irrigation is required on lots abutting the golf course. Required Landscaping shall be installed before the primary building improvement is occupied. Landscaping which has been installed in any lot shall be properly maintained at all times. Grasses and weeds shall at no time be allowed to exceed 6" in height on vacant lots. Recommendations by the Committee with respect to tree disease control must be followed immediately.

V. SIGNS. No signs of any character shall be allowed on any lot except one professionally done for lot identification purposes; provided, however, that the Declarant shall have the right, during the periods of development, construction, and sales, to construct and maintain signs as may be reasonably convenient for such construction and sale. In addition, when a lot or home is for sale, one "For Sale" sign may be placed on the lot, but it may not be larger than three feet square (3ft. x 3ft.).

Address Signs. A recessed address sign of either concrete or metal must be set in to the front wall of all houses (no address signs may be placed in the front yard). The sign must have four-inch (4") numerals, but no more than six inches (6 in.) in overall height, and have an appropriate overall width so as to accommodate all numerals. The sign must be situated so as to be visible from the street.

W. ANIMALS & LIVESTOCK. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, and other ordinary household pets may be kept, provided that they are not kept, bred, or maintained for commercial purposes, and

provided that they are maintained as essentially indoor pets. Pets must not be allowed to become a nuisance to the neighborhood.

No animal shall be allowed to run at large within the Property. All animals, when allowed outdoors, shall be kept within an enclosed area, which must be clean, odor-free, sanitary, and reasonably free of waste at all times.

X. FIREARMS & FIREWORKS. No firearms, fireworks, or other explosives shall be kept or maintained on any lot, other than firearms for the protection of an Owner's family and property, and firearms for sporting or recreational purposes. No explosives, or fireworks of any type, shall be discharged within the Property. No hunting, including hunting with bow and arrow, pellet gun, or sling shot, shall be permitted within the Property, and no firearms of any type shall be discharged within the Property unless necessary in order to protect an Owner's person, family, or property.

Y. PROHIBITED ACTIVITIES. No business, professional, commercial, or trade venture or activity shall be conducted on any lot, provided, however, that storage areas, model homes, and sales offices may be constructed and maintained by Declarant, its successors and assigns. An office incidental to an Owner's business may be maintained within an Owner's residence so long as activities conducted in connection with the home office do not attract traffic, otherwise become an annoyance or nuisance to the subdivision, and the office is not advertised in any way.

Z. ANNOYANCE OR NUISANCE. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done which is an annoyance or nuisance to the neighborhood (this includes noise pollution such as barking dogs and loud music). All exterior lighting shall require approval by the Committee as a design feature.

AA. DRILLING & MINING OPERATIONS. No drilling of any type, and no oil development or refining, quarrying or mining operation of any kind, shall be permitted upon or in any lot, nor shall oil wells, oil tanks, tunnels, mining excavations, or shafts be permitted upon the Property. No derrick, windmill, or other structure designed for use in pumping water or boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted upon any lot.

BB. RE-SUBDIVISION. None of the lots shall be re-subdivided. Only one single family dwelling shall be erected on a lot.

CC. BURNING. There shall be no burning on any lot, or any portion of the property by any person, including builders, residents, contractors, or other Owners.

IV. THE ASSOCIATION

A. ORGANIZATION. Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a nonprofit

corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration.

B. **MEMBERSHIP.** Any person upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the lot which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged or alienated except together with the title to the lot.

C. **VOTING RIGHTS.** There shall be two (2) classes of membership for purpose of voting on any Association matter.

1. The Class A Members shall include each Owner of a lot within the Property and each such Owner shall have one (1) vote for each lot owned.

2. The Class B Member shall be Declarant. For every one (1) vote outstanding in favor of any other person or entity, Declarant, as the sole Class B Member, will have four (4) additional votes until the expiration or termination of the Development Period. Upon expiration or earlier termination of the Development Period, the Class B Membership of Declarant shall convert to a Class A Membership.

3. Notwithstanding the foregoing, or any provision to the contrary in this Declaration, until one hundred and twenty (120) days after the tenth (10th) anniversary of the date on which this Declaration is recorded, Declarant will have the sole right to appoint and remove all members of the Board and their successors (any appointment of a successor will be deemed a removal of the Board member being replaced by such appointment). Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing. Declarant may terminate its right as to the appointment and removal of one or all the Board members or officers of the Association by recorded written instrument. In the event Declarant terminates its right to appointment and remove less than all of the Board members of the Association, the Board positions to which the termination applies will be elected by the members of the Association. Each Board member elected by the Members in accordance with the foregoing sentence will be elected for a term of one (1) year.

4. Within one hundred and twenty (120) days after the 10th anniversary of the date on which this Declaration is recorded, or sooner as determined by Declarant, the Board shall call a meeting of members of the Association for the purpose of electing one-third (1/3) of the Board (the "**Initial Member Election Meeting**"), which Board member(s) must be elected by Owners other than Declarant and will serve for a one (1) year term (the "**First Member Elected Directors**"). Declarant shall continue to have the sole right to appoint and remove two-thirds (2/3) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

Notwithstanding the foregoing, the First Member Elected Directors' terms will expire as of the date of the Member Election Meeting (as defined below).

5. At the expiration or termination of the Development Period, Declarant shall thereupon call a meeting of the members of the Association where the Declarant-appointed directors will resign and the members, including Declarant, will elect three (3) new directors (to replace all Declarant-appointed directors and all of the First Member Elected Directors) (the "Member Election Meeting"), one (1) director for a three (3) year term, one (1) director for a two (2) year term, and one (1) director for a one (1) year term (with the individual receiving the highest number of votes to serve the three (3) year term, the individual receiving the next highest number of votes to serve the two (2) year term, and the individual receiving the third highest number of votes to serve a one (1) year term). Upon expiration of the term of a Director elected by the members pursuant to this paragraph 5, his or her successor will be elected for a term of two (2) years.

Where a lot is held jointly or in common by more than one (1) Owner, such Owners thereof shall designate one (1) Owner among them who shall be entitled to cast such vote and no other person shall be authorized to vote in behalf of such property interest except by proxy signed by such Owners. A copy of such written designation shall be filed with the Board before any such vote maybe cast, and, upon the failure of the Owners thereof to file such designation, such vote shall neither be cast nor counted for any purpose whatsoever.

D. POWERS AND AUTHORITY OF THE ASSOCIATION. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which 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 by this Declaration. Notwithstanding the foregoing, or any provision herein to the contrary, except to the extent that an act of the Association is specifically contemplated or required under applicable law to be made by the Association's members, the Association shall act at all times by and through the Board, and references herein to the Association shall mean "the Association, acting by and through the Board."

Without limitation on the generality of the foregoing, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

1. Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact the Association Rules and Bylaws. The content of the Rules and the Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.

2. Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.

3. Records. To keep books and records of the Association's affairs.

4. Assessments. To levy assessments as provided in Article V below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article V hereof in order to raise the total amount for which the levy in question is being made.

5. Right of Entry and Enforcement. To enter at any time in an emergency or in a nonemergency, 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 this Declaration or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to this Declaration and the restrictions herein, and the expense incurred by the Association in connection with the entry upon any lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the lot entered upon, shall be a lien upon the lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article V hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name 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 this Declaration. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce this Declaration; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant.

6. Levy of Fines. To levy a fine against any person or Owner violating this Declaration, not to exceed One Hundred Dollars (\$100.00) per day for each day such violation continues after the date on which written notice of such violation by the Association is given to the Person or Owner violating this Declaration. Any such fine shall be the personal liability of the person or Owner against whom such fine is levied, and the Association shall be entitled to recover reasonably attorney's fees and court costs in any action to collect such fine. All fines collected by the Association may be used for any lawful purpose of the Association.

7. Suspension of Rights and Privileges. To suspend any and all rights and privileges which such person or Owner may have under this Declaration and/or as an Owner, including, but not limited to, the privilege to use any amenities.

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

9. Association Management. To retain and pay for the services of a manager to manage and operate the Association and any common area or facilities, operation of

which may be delegated to the Association, to the extent deemed advisable by the Board. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the manager.

E. **MAINTENANCE OBLIGATIONS OF THE ASSOCIATION.** The association shall cause to be performed any necessary maintenance of all drainage, detention facilities and other common area(s) serving the Subdivision, although such drainage and detention facilities and other common area(s) may not be located within the boundaries of the Subdivision. The Association is specifically authorized and obligated to make and collect such Assessments as may be necessary to provide funds for such maintenance.

V. FUNDS AND ASSESSMENTS

A. **ASSESSMENTS.** The Association may from time to time levy "Assessments" against each lot that has been improved. The level of Assessments shall be equal and uniform among improved lots. For purposes of this section, a lot shall not be considered to be "improved" until a house or permitted building has been constructed thereon. No Assessments hereunder shall be levied against any unimproved lot.

1. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

2. Each unpaid Assessment (and fine levied pursuant to the preceding Article), together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the lot against which the Assessment fell due, and shall become a vendor's lien against each such lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

B. **MAINTENANCE FUND.** The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

C. **REGULAR ANNUAL ASSESSMENTS.** Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, which shall be limited to the costs incurred pursuant to the powers granted in this Declaration, the duties set forth in this Declaration and the costs of enforcing this Declaration, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as

herein provided, and the level of Assessments set by the Board shall 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, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall 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.

In addition to the regular annual assessment, as a condition to the sale of every Lot, every purchaser and seller (other than the Declarant) shall be assessed a community enhancement fee that shall be paid, one-half each, by each seller and purchaser at every closing (the "Community Enhancement Fee"). The Community Enhancement Fee shall be paid to and for the sole benefit of the Association. The amount of the Community Enhancement Fee shall initially be \$100.00. Upon the third anniversary of the date of recording this Declaration, the Community Enhancement Fee that will be payable at every closing by every purchaser and seller (other than Declarant) shall be the greater of \$100.00 or .15 of the sales price of the Lot. By way of example, if the Lot sells for \$100,000.00, the Community Enhancement Fee that will be due and payable shall be \$150.00, with seller and purchaser each being obligated to pay \$75.00.

D. SPECIAL ASSESSMENTS. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments to enable the Board to carry out the mandatory functions of the Association under this Declaration.

E. OWNER'S PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS. The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner of the lot covered by 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 shall be obligated to pay interest at the rate of ten percent (10%) per annum on the amount of the Assessment, from the due date thereof, together with all costs and expenses of collection, including reasonable attorneys fees.

F. ASSESSMENT LIEN AND FORECLOSURE. All sums assessed in the manner provided in this Article but unpaid shall, together with interest as provided hereinabove and the cost of collection, including attorneys fees, expenses and court costs as herein provided, thereupon become a continuing lien and charge on the lot covered by such Assessment, which shall bind such lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said lot, except only for tax liens and all sums unpaid on a first mortgage lien of record, securing in either instance sums borrowed for the improvement of the lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and a duly authorized officer of the Association must sign such subordination. To evidence the aforesaid Assessment lien, the Association may 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 shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Williamson County, Texas. Such lien for payment of Assessments shall attach with the priority given above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure on the defaulting Owner's lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses and reasonable attorneys fees incurred. The Association shall have the power to bid 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 shall report to said mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

Each Owner, by acceptance of a deed to his lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such lot and hereby vests in the Board the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, both judicially and by non-judicial foreclosure pursuant to Texas Property Code §51.002 (as the same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of the deed to his lot, expressly GRANTS, BARGAINS, SELLS, AND CONVEYS to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Assessment, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time. The trustee herein designated may be changed anytime and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and filed in the Office of the County Clerk of Williamson County, Texas. In the event of the election by the Board to foreclosure the liens herein provided for nonpayment of sums secured to be paid by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such lot, and all rights appurtenant thereto, at the door of the County Courthouse of Williamson County, Texas on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m., within three hours of the time designated in the notice of such sale, to the highest bidder for cash or cash equivalent at public venue after the trustee or the Board, respectively, shall have given notice of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such lot and his heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Williamson County, Texas and in addition, the Board shall serve written notice at least twenty-one (21) days

preceding the date of sale or the proposed sale by certified mail on each of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, property addressed to such Owner or Owners at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by lien, together with costs and attorneys fee and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure, the occupants of such lot shall be required to pay a reasonable rent for the use of such lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such lot by forcible detainer without further notice.

It is the intent of the provisions of this Section to comply with the provisions of Texas Property Code §51.002, relating to non-judicial sales by power of sale and, in the event of the amendment of said §51.002 hereafter, which amendment is applicable hereto, the President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the office of the County Clerk of Williamson County, Texas, amend the provisions hereof so as to comply with said amendments to §51.002 or its successor.

VI. EASEMENTS & DRAINAGE

A. **UTILITIES EASEMENT.** An easement ten feet (10 ft.) in width adjacent to the front property line adjoining each street is expressly reserved on all lots for use by public utility companies for the purpose of constructing and maintaining utility conduits, telephone lines, street lighting, electric light poles, towers, and other equipment to supply utility services. Private utility companies (such as cable TV providers) may not use the public utility easements without the prior written consent of the Committee, which may grant or withhold its consent for any reason, or for no reason.

B. **MISCELLANEOUS DRAINAGE.** No building shall be constructed on a lot until provisions have been made for drainage of significant amounts of surface water to off site, without draining across adjacent property. Drainage shall be into the street or road area, or into natural drainage areas, and such drainage shall be the responsibility of each Owner. No Owner may block any drainage ditch.

VII. MAINTENANCE REQUIREMENTS

A. **LAND.** All plants, shrubs, trees, grass, and landscaping on a lot shall be maintained by each lot Owner in an attractive, trimmed, and neat condition at all times. The

Owner of each lot, by the acceptance of the conveyance of the lot, also assumes the obligation to maintain all portions of the lot situated in an area designated on the recorded plat, in these covenants, or as recorded in the Williamson County Deed or Plat Records as greenbelt, common, area, park, drainage, recreation, or similar areas.

B. **REPAIRS & ALTERATIONS TO STRUCTURES.** Each Owner shall maintain his dwelling and all improvements on his lot in good condition and neat appearance, including repainting as necessary. However, any exterior repainting which involves a change in color or any other redecorating, alteration, repair, or improvement which changes the external appearance of a dwelling, shall require approval of the Committee in the same manner as new construction. All work shall be done expeditiously, in a good and workmanlike manner, with minimum inconvenience to other Owners.

C. **ACCEPTABILITY OF MAINTENANCE.** The Committee shall have final authority to determine the acceptability of the maintenance and appearance of all lots and houses, and to determine the necessity for further maintenance of lots or houses within the Property. No unsightly lots or houses shall be permitted any time.

D. **DEFAULT.** In the event an Owner of a lot or dwelling shall fail to maintain his lot or dwelling, or any improvements, in a neat and orderly manner as provided above, which failure is not remedied within thirty (30) days following a written notification by the Committee to the Owner, the Committee, its agents and representatives, shall have the right (but not the obligation) to enter upon the lot and property and repair, paint, and maintain the lot and the exterior of any and all buildings and other improvements, and the landscaping, all at the expense of the Owner.

E. **MAINTENANCE EXPENSE.** In the event that Declarant or the Committee incurs any expense in maintaining all or any portion of a lot or house, the costs shall be charged to and paid by the Owner of that lot or house. If the Owner fails to pay those costs upon demand, the Committee shall have the right to maintain an action in a court of appropriate jurisdiction to recover any sums so expended, together with reasonable attorneys fees and interest at the highest rate allowed by law.

F. **APPLICABILITY.** These covenants also apply to building contractors who own lots "In inventory", prior to construction of a residence, as well as to homeowners; all Owners must keep their lots neat and orderly.

VIII. ANNEXATION OF ADDITIONAL LAND

A. **ADDITIONS BY DECLARANT.** Declarant hereby reserves the right, but not the obligation, to expand the Property by adding additional land to the Property from time to time. This Declaration shall become effective with respect to any such annexed additional land on the date on which there is filed for record in the Office of the County Clerk of Williamson County, Texas, a "**Supplemental Declaration**" to that effect signed and acknowledged by Declarant. Such Supplemental Declaration shall describe the additional land, shall refer to these

Restrictions and shall declare that these Restrictions shall apply to and affect such additional land. Upon the filing of the Supplemental Declaration, each lot comprising the additional land shall be included within the definition of Property set forth herein. Declarant may cause to be recorded as many separate Supplemental Declarations as may be desired from time to time and at any time, to effect the annexation of additional land. Annexation of additional land may be accomplished by Declarant without the consent of any other party or entity.

B. ENCOMPASSING NATURE OF THE RESTRICTIONS. Upon the filing of a Supplemental Declaration annexing additional land to the Property, these Restrictions shall further apply to and affect specifically designated portions of the property described in these Restrictions and the property described in any such Supplemental Declaration and shall also bind all owners of any part of such property with the same effect as if the property described in the Supplemental Declaration were originally (i) subject to and described in these Restrictions and (ii) included within the definition of "Property". Thereafter, the powers and responsibilities of the Committee and the Board shall be coextensive with regard to all property included within the Property, as expanded, and the Board shall, pursuant to the provisions of these Restrictions, constitute the Board for the Property, as expanded, and the rights, obligations and duties of each Owner shall be determined in the same manner that the rights, obligations and duties of the Owners were determined prior to the recordation of such Supplemental Declaration. The Board shall thereupon continue to maintain one maintenance fund for the collection and disbursement of monies as required and permitted hereby for the maintenance, repair and operation of the Property, as expanded, and the Property, as expanded, shall be deemed to be a residential project for the purposes, and in accordance with the provisions, of these Restrictions.

C. DECLARANT'S POWER TO EXPAND THE SUBDIVISION. Declarant further reserves the right, without the consent of any other party or entity, to make such additions, deletions and modifications to these Restrictions with respect to the additional land, as may be necessary to reflect the different character, if any, of such portion of the additional land from the remainder of the Property, or as may be necessary or desirable for any other reason. Such additions, deletions and modifications shall be set forth in the Supplemental Declaration relating to such portion of the additional land.

D. DECLARANTS POWER OF ATTORNEY. Each Owner hereby appoints Declarant as its attorney-in-fact for the purpose of effecting the provisions of this Article, and the power hereby granted to Declarant shall be, and is, a power coupled with an interest and is irrevocable.

E. ADDITIONAL LAND NOT SUBJECT TO RESTRICTIONS UNLESS AND UNTIL ANNEXATION. These Restrictions, including but not limited to this Article, do not presently create any interest in or with respect to any additional land, and these Restrictions shall not affect in any manner all or any part of such additional land unless and until a Supplemental Declaration is filed with respect thereto or to a portion thereof in accordance with this Article.

IX. GENERAL PROVISIONS

A. INTEREST. In the event any charge, cost, or other expense or monetary duty is not paid when due, then such amount shall bear interest at the highest rate allowed by law from the due date until paid.

B. ENFORCEMENT. The Declarant, and each Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by this Declaration, or any supplemental declaration. Any failure to enforce these covenants and restrictions shall not be deemed a waiver of the right to do so thereafter. Any violation of these covenants shall not affect the lien of any mortgage or deed of trust of any secured party. Any person or entity found by a court of appropriate jurisdiction to be in violation of this Declaration shall be liable to the party seeking to enforce this Declaration for all costs, expenses, and reasonable attorney fees incurred in connection with the enforcement.

C. PRIORITY OF LIENS. All duties or burdens, including fines, imposed upon Owners by this Declaration are deemed to impose a lien and charge upon each lot. In the event of default of any of these obligations by an Owner, Declarant, its successors and assigns, shall have the rights to foreclose its lien pursuant to Sec. 51.002, et seq., of the Texas Property Code. This lien or charge shall at all times be subordinate to any valid lien securing an indebtedness incurred primarily for purchase money or construction of improvements.

D. SEVERABILITY. Invalidation of any one or more of the provisions of these covenants and restrictions by judgment or court order shall in no way affect the validity of any other provision and all other provisions shall remain in full force and effect.

E. AMENDMENT & DURATION. Anything to the contrary contained in these CCRs notwithstanding, the Declarant shall have, and hereby reserves, the right, at any time during the Development Period, without the joinder or consent of any other party or entity (including the Owners) to amend these restrictions, covenants, and conditions by an instrument in writing duly signed, acknowledged, and filed for record in the office of the County Clerk of Williamson County, Texas. Each Owner hereby appoints Declarant as its attorney-in-fact for the purpose of effecting the provisions of this paragraph, and this power is coupled with an interest and is irrevocable.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the date this Declaration has been recorded in the Official Public Records of Williamson County, Texas.

DECLARANT:

KB HOME LONE STAR INC., a Texas corporation


By: [Signature]

Name: Gerry Poe

Title: Dir. of Public Affairs

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This instrument was acknowledged before me on this 4th day of August, 2014 by Gerry Poe, Dir. of Public Affairs of KB HOME LONE STAR INC., a Texas corporation, on behalf of said corporation.

(seal) 

[Signature]
Notary Public, State of Texas

After recording, return to:
Joshua D. Bernstein
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701

2014061857
Electronically Recorded
OFFICIAL PUBLIC RECORDS

[Signature]

Nancy E. Rister, County Clerk
8/5/2014 12:49 PM

Pages: 19 Fee: \$93.00
Williamson County Texas