

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**NORTHTOWN PARK SECTION 8**

Watershed Protection and  
Development Review  
505 Barton Springs, 4th Flr.  
Austin, TX 78701  
ATTEN: Team 1 *WATER*

**THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §**

**KNOW ALL MEN BY THESE PRESENTS**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NORTHTOWN VILLAGE** (this "Declaration"), is made on the date hereinafter set forth by **KB HOME LONE STAR LP**, ("Declarant") for the purpose of evidencing the covenants, conditions and restrictions contained herein.

**WITNESSETH:**

**WHEREAS**, Declarant, is the owner of that certain 8.187 acre tract of real property located in Travis County, Texas, as more particularly described on **Exhibit "A"** attached hereto and incorporated herein for all purposes, to be platted as Northtown Park Section 8, approved by the City of Austin on \_\_\_\_\_, 2003, and filed of record as Document Number \_\_\_\_\_ of the Plat Records of Travis County Texas, said subdivision hereinafter referred to as the "Development" or the "Subdivision", and such plat, as may be amended or further replatted, being referred to as the "Plat", all of said real property being more specifically described on the Plat of the Development which are incorporated herein and made a part hereof for all purposes (the "Property").

**NOW, THEREFORE**, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of Declarant, the District, and each Owner (as hereinafter defined).

**ARTICLE I**

**ADDITIONAL DEFINITIONS**

**1.1 Declarant.** The term "Declarant" shall mean KB HOME LONE STAR LP, a Texas limited partnership, and any party to whom it shall expressly assign in writing, its rights, powers, privileges and prerogatives hereunder.

1.2 **District.** The "District" shall mean NORTHTOWN MUNICIPAL UTILITY DISTRICT, a governmental agency of the State of Texas, organized under the provisions of Article XVI, Section 59 of the Texas Constitution.

1.3 **City.** "City" shall mean the City of Austin, Texas.

1.4 **Committee.** "Committee" shall mean the Architectural Control Committee for the Subdivision as provided in Section 3.1 of this Declaration.

1.5 **County.** "County" shall mean Travis County, Texas.

1.6 **Home.** "Home" shall mean a single-family residential unit constructed on a Lot being a part of the Property, including the enclosed garage utilized in connection therewith and the Lot upon which the Home is located.

1.7 **Lienholder.** "Lienholder" or "Mortgagee" shall mean the holder of a first mortgage lien, either on any Home and/or any Lot.

1.8 **Lot.** "Lot" or "Lots" shall mean and refer to a portion of the Property designated as a Lot on the Plat of the Property, excluding open spaces, streets, alleys and any area of common responsibility. Where the context requires or indicates, the term Lot shall include the Home and all other improvements which are or will be constructed on the Lot.

1.9 **Owner.** "Owner" shall mean and refer to the record Owner, other than Declarant whether one or more persons or entities, of a fee simple title to any Lot and shall include any homebuilder, but shall exclude those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot which is a part of the Property, through deed in lieu of foreclosure or through judicial or nonjudicial foreclosure.

## ARTICLE II

### CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

2.1 **Residential Use.** The Property shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family residence per Lot, which residence may not exceed two and one-half (2 1/2) stories in height and a private garage as provided below, which residence shall be constructed to meet or exceed minimum Federal Housing Authority ("FHA"), Veteran's Administration ("VA") and City of Austin standards, unless otherwise approved in writing by the Declarant. Notwithstanding anything contained herein to the contrary, any construction meeting the minimum construction requirements of the City of Austin shall be deemed to meet the requirements of this Declaration.

2.2 **Single Family Use.** Each residence shall be limited to occupancy by only one family consisting of persons related by blood, adoption or marriage or no more than two unrelated

persons residing together as a single housekeeping unit, in addition to any household or personal servant staff.

**2.3 Garage Required.** Each residence shall have an enclosed garage suitable for parking a minimum of one (1) standard size automobile, which garage shall conform in design and materials with the main structure.

**2.4 Restrictions on Resubdivision.** No Lot shall be subdivided into smaller Lots.

**2.5 Driveways.** All driveways shall be surfaced with concrete or similar substance approved by the Declarant.

**2.6 Uses Specifically Prohibited.**

(a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which may be placed on a Lot only in places which are not visible from any public street) shall be permitted on any Lot except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a specifically permitted Lot during construction of the residence on that Lot. No building material of any kind or character shall be placed or stored upon the Property until construction is ready to commence, and then such material shall be placed totally within the property lines of the Lot upon which the improvements are to be erected and stored only for a reasonable period of time during the construction of such improvements.

(b) All boats, marine crafts, hovercraft, aircraft, recreational vehicles, pick-up campers, travel trailers, motor homes, camper bodies or similar vehicles or equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view from any adjacent Lot or roadway within the Subdivision, and no repair or maintenance work shall be done on any of the foregoing, except in enclosed garages or other structures. No such vehicle or equipment shall be used as a residence, an office, or a storage area temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked for a reasonable period of time while in actual use for the construction, maintenance or repair of a residence in the Development.

(c) Trucks with tonnage in excess of one (1) ton and any commercial vehicle with a commercial advertisement shall not be permitted to park overnight on the Property (except those used by a builder for a reasonable period of time during the construction of improvements) unless such vehicle is parked in the garage of the Home.

(d) No vehicle of any size which transports flammable or explosive cargo may be kept on the Property at any time.

(e) No motorized vehicle or similar equipment shall be parked or stored on or in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (including those with attached bed campers) that are in operating condition and have current license

plates and inspection stickers and are in current use. All such vehicles must be parked or stored on paved surfaces or garages and shall not be parked or stored on any other portion of a Lot unless properly screened from view from the adjacent Lots and roadways within the Subdivision.

(f) No structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure or other out-building shall be used on the Property at any time as a dwelling house; provided, however, that any builder may maintain and occupy model houses, sales offices and construction trailers during the construction period, but not as a residence.

(g) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other domestic household animals (within the ordinary meaning and interpretation of such words) may be kept as household pets. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the peace and quiet and health and safety of the community. No more than four pets will be permitted on each Lot. Pets must be restrained (by leash or otherwise directly restrained) or confined to the homeowner's rear yard within a secure fenced area or within the house. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. Each Owner must keep his or her Lot clean and free of pet debris or odor noxious to adjoining Lots. All animals must be properly registered and tagged for identification in accordance with local ordinances.

(i) No Lot or other area of the Property shall be used as a dumping ground for rubbish or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and furniture. Trash, garbage or other waste shall not be kept except in sanitary containers. All containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. Such containers must remain concealed from public view except for on specific trash collection days. Materials incident to construction of improvements may only be stored on Lots during construction of the improvement thereon.

(j) No individual water supply system shall be permitted on any Lot.

(k) No individual sewage disposal system shall be permitted on any Lot.

(l) No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a residence. No garage shall be converted for use as a bedroom, sleeping quarters, or other living area.

(m) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall, window or roof of a residence which is visible from a public street. No evaporative cooler shall be installed on the front wall or window of a residence.

(n) Except with the written permission of the Declarant or as preempted by the FCC or other governmental agency, no antennas, satellite dishes or other equipment for receiving or sending sound or video signals shall be permitted in or on the Property except antennas for AM or FM radio reception and UHF and VHF television reception. Such antennas shall be located inside the attic of the main residential structure except that, only upon the prior written permission of the Declarant, one antenna may be permitted to be attached to the roof of the main residential structure not to extend above said roof more than a maximum of six (6.0) feet and one satellite dish or similar antenna may be placed in the rear yard of a Lot so long as it is completely screened from view from any adjacent street or other public area.

(o) No Lot or improvement thereon shall be used for a business, professional, commercial or manufacturing purpose of any kind for any length of time. No business activity shall be conducted on the Property which is not consistent with single family residential purposes. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's temporary use of a residence as a sales/construction office for so long as such builder is actively engaged in construction on the Property. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art lessons so long as such activities do not materially increase traffic or the number of cars parked on the street or interfere with adjoining homeowners' peaceful use and enjoyment of their residences and yards.

(p) No fence, wall, hedge or shrub planting which obstructs sight lines at an elevation between three and six feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within the area that is ten feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a minimum height of six feet above the adjacent ground line.

(q) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment as permitted under this Declaration, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected on the Property.

(r) Within those easements on each Lot as designated on the Plat of the Development, no improvement, structure, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water through drainage channels. The general grading, slope and drainage plan of a Lot

as established by the Declarant's approved development plans may not be altered without the approval of the City and/or other appropriate agencies having authority to grant such approval.

(s) No sign of any kind or character, including (a) any signs in the nature of a "protest" or complaint against Declarant or any homebuilder, (b) or that describe, malign or refer to the reputation, character or building practices of Declarant or any homebuilder, or (c) discourage or otherwise impact or attempt to impact anyone's decision to acquire a Lot or residence in the Subdivision shall be displayed to the public view on any Lot or from any home on any Lot except for one professionally fabricated sign of not more than five square feet advertising the Property for rent or sale, or signs used by a builder to advertise the Property during the construction and sales period. Moreover, no Owner may use any public medium such as the "internet" or any broadcast or print medium or advertising to similarly malign or disparage the building quality or practices of any homebuilder, it being acknowledged by all Owners that any complaints or actions against a homebuilder or Declarant are to be resolved in a private manner and any action that creates controversy or publicity for the Subdivision or the quality of construction of any homes within the Subdivision will diminish the quality and value of the Subdivision. Declarant, any home builder, or their agents shall have the right, without notice, to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. The failure to comply with this restriction will also subject any Owner to a fine of \$100.00 per day (to be collected by Declarant) for each day that such Owner fails to comply with this restriction. The non-payment of such fine can result in a lien against said Lot, which lien may be foreclosed on in accordance with the terms set forth in this Declaration in order to collect such fine by the Declarant or any Owner in the Subdivision.

(t) Outdoor clothes lines and drying racks visible to adjacent Lots or public streets within the Subdivision are prohibited. Owners or residents of Lots where the rear yard is not screened by solid fencing or other such enclosures, shall construct a suitable enclosure or screening to shield from public view any clothes drying racks, yard maintenance equipment and/or storage of materials.

(u) Except within fireplaces in the Home and within equipment designed for outdoor cooking, no burning shall be permitted anywhere on the Property. The use of fireworks anywhere on the Property is prohibited.

**2.7 Minimum Floor Area.** The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls (but exclusive of open porches, garages, patios and detached accessory buildings), shall be not less than One Thousand Sixty Seven (1,067) square feet or the minimum floor area as specified by the City, whichever is greater.

**2.8 Building Materials.** The total exterior wall area (excluding windows, doors and gables) of the entire first floor of each residence constructed on a Lot shall not be less than One Hundred percent (100%) brick, stucco, brick veneer, stone, stone veneer, cement plank, hardboard, fiber cement siding, or other masonry material approved by the Declarant. Windows, doors, other openings, gables or other areas above the height of the top of standard height first-floor windows are excluded from calculation of total exterior wall area.

**2.9 Setback Requirements.** No dwelling shall be located on any Lot nearer to the front lot line or nearer to the side lot line than the minimum setback lines shown on the Plat or as required by the City.

**2.10 Waiver Of Setback Requirements.** With the written approval of the Declarant or the Committee, and subject to plat and zoning restrictions, any building may be located further back from the front property line of a Lot than provided above, where, in the opinion of the Declarant or the Committee, the proposed location of the building will enhance the value and appearance of the Lot and will not negatively impact the appearance of adjoining Lots.

**2.11 Fences and Walls.** All fences and walls shall be constructed of masonry, brick or wood or other material approved by the Declarant or the Committee. No fence or wall on any Lot shall extend nearer to any street than the front of the residence thereon. Except as otherwise specifically approved by the Declarant, all streetside side yard fencing on corner Lots shall be set no closer to the abutting side street than the property line of such Lot. No portion of any fence shall exceed six (6) feet in height. Any fence or portion thereof that faces a public street shall be constructed so that all structural members and, unless Declarant determines otherwise, support posts will be on the side of the fence away from the street and are not visible from any public right-of-way.

**2.12 Sidewalks.** All walkways along public right-of-ways shall conform to the minimum property standards of the City, FHA and VA.

**2.13 Mailboxes.** Mailboxes shall be standardized and shall be constructed of a material and design approved by the Declarant (unless gangboxes are required by the U.S. Postal Service).

**2.14 Windows.** Windows, jambs and mullions shall be composed of anodized aluminum or wood. All front elevation windows shall have baked-on painted aluminum windows (no mill finish).

**2.15 Landscaping.** Landscaping of each Lot shall be completed within sixty (60) days, subject to extension for delays caused by inclement weather, after the construction of a Home is completed and shall include grassed front yards.

**2.16 General Maintenance of Lots.** Following occupancy of the Home upon any Lot, each Owner shall maintain and care for the Home and all improvements, fences, trees, foliage, plants, and lawns on the Lot and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include but not be limited to: (i) the replacement of worn and/or rotted components, (ii) the regular painting of all exterior surfaces, (iii) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, fences, walks, drives, parking areas and other exterior portions of the improvements to maintain an attractive appearance, and (iv) regular mowing and edging of lawn and grass areas. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, the



Declarant, the District and any Owner, at their sole option and discretion, but without any obligation to do so, but only after ten days written notice to such Owner to comply herewith, may enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse said Owner for the cost of such work within ten days after presentment of such statement. This provision, however, shall in no manner be construed to create a lien in favor of any party on any Lot for the cost or charge of such work or the reimbursement for such work.

**2.17 Burglar Bars.** No bars or obstructions intended for use as burglar bars or sold as devices intended to prohibit forced entry into a residence may be placed on the exterior of a Home, including but not limited to windows and doors.

**2.18 Small Lot Subdivision.** The Subdivision is developed in compliance with Section 25-4-232 of the Austin City Code in effect on the date this Declaration is recorded in the Official Public Records of Travis County, Texas, and shall comply with the requirements of such Section including without limitation the requirements listed below. In the event of any conflict between the provisions of this Section 2.18 of this Declaration and any other provision of this Declaration, the provisions of this Section 2.18 of this Declaration shall control.

- (a) The minimum Lot area shall be 3600 square feet, except for a corner Lot and 4500 square feet for a corner Lot.
- (b) The minimum Lot width shall be 40 feet for an interior Lot, 50 feet for a corner Lot, and 40 feet for a Lot on a cul-de-sac or curved street, except it may be 33 feet at the front lot line.
- (c) The minimum front yard setback shall be 20 feet.
- (d) The minimum street side yard setback is 10 feet.
- (e) A Lot may have one zero lot line.
- (f) The combined side yard setbacks of a Lot may be not less than 10 feet.
- (g) Except for a patio or patio cover, the minimum distance between structures on adjoining Lots shall be 10 feet. The minimum distance between a patio or patio cover and the roof line of a structure on an adjoining Lot is 6 feet.
- (h) The wall of a structure built adjacent to a zero lot line or within 5 feet of a common side lot line must be solid and opaque and may not contain an opening.
- (i) The minimum rear yard setback is 5 feet, excluding drainage easements.
- (j) The minimum setback is 10 feet between a rear access easement and a building or fence.



- (k) The maximum building coverage is 45 percent.
- (l) The maximum impervious cover is 55 percent.
- (m) The maximum building height is 35 feet.
- (n) A Lot may have not more than one dwelling unit.
- (o) The maintenance of all common areas and access easements, if any, shall be the responsibility of the adjoining Property Owners.

**2.19 Construction Activities.** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements by Declarant or an Owner upon any Lot within the Property. Specifically, no such construction activities shall 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 Committee in its sole good faith judgment, the Committee shall have the authority to seek an injunction to stop such construction.

**2.20 Nuisance.** No noxious or offensive activities shall be permitted to exist or operate upon any portion of the Property, nor shall anything be done upon the Property which may be offensive or detrimental to any portion of the Property or its occupants (as may be reasonably determined by Declarant and/or the Committee).

**2.21 Detached Buildings.** No detached accessory buildings, including, without limitation, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written approval of the Committee. Every detached accessory building shall be compatible with the design of and materials utilized in the single-family residential structure located upon the Lot and shall not be visible from the street located adjacent to the front lot line of said Lot. Any provision in this Declaration to the contrary notwithstanding, in no event shall any detached accessory building exceed eight feet (8') in height, eight feet (8') in width, and ten feet (10') in length.

### ARTICLE III

#### ARCHITECTURAL REVIEW COMMITTEE

**3.1 Appointment of Members.** The Declarant shall appoint an Architectural Control Committee (the "Committee"), which shall consist of three members who shall be natural persons and may be employed by Declarant. After all of the Lots have been sold by Declarant, only residents of the Subdivision, residents of the District, or employees or contractors of the District may serve or be appointed as members of the Committee. In the event of death, incapacity or resignation of a member of the Committee, the successor for such member shall be appointed by

the majority of the remaining members of the Committee, subject to (i) the right of the Declarant to replace a member of the Committee before all of the Lots have been sold by Declarant, and (ii) the right of the District to replace a member of the Committee after all of the Lots have been sold by Declarant. No member of the Committee shall be entitled to any compensation for services performed pursuant to this Article.

**3.2 Action by Architectural Control Committee.** All matters before the Committee shall be decided by majority vote of its members. The Committee may appoint an agent to act on behalf of the Committee, and the Committee may delegate any duties, powers and/or functions to the agent. Any such appointment and delegation shall be in writing. In the absence of such delegation, the vote of a majority of all members of the Committee, which may be taken without a meeting, shall constitute an act of the Committee.

**3.3 Submission of Plans to Architectural Control Committee.** No building, fence, wall, parking area, swimming pool, spa, pole, mail box, driveway, fountain, pond, tennis court, sign, exterior color or shape, or new or modification of a structure shall be commenced, erected or maintained upon any Lot or the patio or garage used in connection with any Lot after the purchase of any Lot from Declarant, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same are submitted to and approved by the Committee. Plans and specifications shall be submitted to the Committee at least thirty (30) days prior to the commencement of any construction or modification. The following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, and floor plan and elevations of all faces of the proposed structure; and a description of all exterior construction materials. A copy of the above described plans and specifications may be retained by Declarant. Plans and specifications shall be submitted to the Committee at 11911 Burnet Road, Austin, Texas 78758, or such other address as may be designated from time to time by the Committee by written designation of such address recorded in the Official Public Records of Travis County, Texas.

**3.4 Approval of Plans.** The Committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specifications within thirty (30) days after the same has been submitted to it, they will be deemed to have been approved by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons therefor. The judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. No construction, alteration, change or modification shall commence until approval of the Committee is obtained. The Committee may approve any deviation from these covenants and restrictions as the Committee, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Approval by the Committee of the plans and specifications or its determination that the completed construction or modification has been constructed in accordance with the plans and

specifications shall be deemed to be an acknowledgment by the Committee that such are in accordance with this Declaration and such acknowledgment shall be binding against the Owners of the Lots and the Property.

**3.5 Committee Members' Liability.** Neither the Declarant, the District, the Committee nor any employees, officers, directors or members thereof shall be liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Any errors in or omissions from the plans of the site plan submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, City codes, state statutes or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

**3.6 Homebuilder Plans.** Notwithstanding anything to the contrary contained herein, once a particular set of plans and specifications submitted by a homebuilder (which for purposes hereof shall be defined as any entity or person in the business of constructing single family residences for the purpose of sale to third parties) has been approved by the Committee or deemed approved, such homebuilder may construct homes in the Development on any Lot in accordance with such plans and specifications without the necessity of obtaining subsequent approvals therefor, so long as there are no major material changes in the plans and specifications and the Committee approves of the location of the plans and specifications to prevent unnecessary duplication thereof within the Development.

**3.7 Design Guidelines.** The Committee has the right to issue Design Guidelines from time to time which will contain the specific provisions applicable to all of the Lots regarding style, basic site design issues, aesthetics of each Home, the use of quality exterior finish materials and minimum landscaping plans for the Lots. The Design Guidelines will be used by the Committee with the Declaration to determine the approval of all plans.

## ARTICLE IV

### GENERAL PROVISIONS

**4.1 Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the property lines to the residences. Declarant reserves the right to make changes in and additions to the above-referenced easements for the purpose of most efficiently and economically installing improvements to the Lots.

**4.2 Enforcement.** Declarant, the District and any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by

Declarant, the District or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys fees from the nonprevailing party.

**4.3 Severability.** If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

**4.4 Term.** The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by Declarant (during the time it owns any Lots) or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote, of the then Owners of 67% of the Lots (and the City, if then a party hereto) agree in writing to terminate or change this Declaration in whole or in part and such writing is recorded in the Real Property Records of the County.

**4.5 Amendment.**

(a) This Declaration may be amended or modified by a written instrument executed and acknowledged by sixty-six and two-thirds percent (66-2/3 %) of the then Owners of Lots encumbered by this Declaration and filed in the Official Public Records of Travis County, Texas. If the proposed amendment involves a modification of any of the covenants or restrictions pertaining to the use, maintenance, operation, and/or supervision of any common areas, the approval of the City must also be obtained for such amendment. Any and all amendments, if any, shall be recorded in the office of the County Clerk of the County. Notwithstanding the foregoing, Declarant shall have the right to execute and record amendments to this Declaration without the consent or approval of any other party (i) before all of the Lots have been sold by Declarant, or (ii) if the sole purpose of the amendment is for the purpose of correcting technical errors or for purposes of clarification.

(b) Declarant intends that this Declaration may be amended to comply (if not in compliance with) all requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), FHA and VA. Notwithstanding anything to the contrary contained herein, if this Declaration does not comply with FHLMC, FNMA, VA or FHA requirements, the Declarant shall have the power in its discretion (on behalf of each and every Owner) to amend the terms of this Declaration or to enter into any agreement with FHLMC, FNMA, VA, and FHA, or their respective designees, reasonably required by FHLMC, FNMA, VA or FHA to allow this Declaration to comply with such requirements. Should the FHLMC, FNMA, VA or FHA subsequently delete any of their respective requirements which necessitate any of the provisions of this Declaration or make any such requirements less stringent the Declarant, without approval of the Owners, may, upon reasonable justification, cause an amendment to this Declaration to be executed and recorded to reflect such changes.

**4.6 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, in all cases shall be assumed as though fully expressed in each case.

**4.7 Remedies.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant, the District and/or the other Owners and that the Declarant's, the District's and/or the other Owners' remedies at law for any breach of the Owners' obligations contained herein would be inadequate. Enforcement may be commenced by the Declarant, the City, the District or any Owner against any person or persons violating or attempting to violate them, and failure by the Declarant, the District or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The rights created herein are unique and enforceable by specific performance.

**4.8 Notices to Owner.** Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered forty-eight (48) hours after deposited in the United States Mail, postage prepaid, certified or registered mail, and addressed to the last known address of the person who appears as an Owner.

**4.9 Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender and words in the singular, shall be held to include the plural and visa versa unless the context requires otherwise.

**4.10 Binding Effect.** Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the Property, it being understood that such conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except land in the Development. This Declaration, when executed, shall be filed of record in the Real Property Records of the County so that each and every Owner or purchaser of any portion of the Development is on notice of the conditions, covenants, restrictions and agreements herein contained.

**4.11 Recorded Plat; Other Authorities.** All dedications, limitations, restrictions and reservations that are shown on the Plat are deemed to be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by the Declarant, conveying the Lots, whether specifically referred to therein or not. If other authorities, such as the City or the County, impose more demanding, expensive, extensive or restrictive requirements than those that are set forth herein (through zoning or otherwise), the requirements of such authorities shall be complied with. Other authorities' imposition of lesser requirements than those that are set forth herein shall not supersede or diminish the requirements that are set forth herein.

**4.12 Additions to the Development.** The Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of this Declaration to such property, provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

**4.13 No Warranty of Enforceability.** While the Declarant has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants. Any Owner acquiring a Lot in the Development in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom. The Declarant shall not be responsible for the acts or omissions of any individual, entity or other Owners.

**4.14 Right of Enforcement.** The failure by Declarant and/or the District to enforce any provision of this Declaration shall in no event subject Declarant and/or the District to any claims, liability, costs or expense; it being the express intent of this Declaration to provide Declarant and/or the District with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration for the benefit of any Owner(s) of any Lot(s) in the Development and the District.

**4.15 Residential Construction Liability Act.** Without waiving any rights under law or equity, all Owners acknowledge, covenant and agree that residential construction defect claims regarding any Home against the Declarant or any homebuilder in Texas are controlled by the Texas Residential Construction Liability Act (Tex. Prop. Code §27.001 *et seq.*, as amended) which preempts the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code § 17.41 *et seq.*, as amended) and any other law.

**4.16 Additional Easements.**

a. **Continued Maintenance Easement.** In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Declarant and/or the District shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Declarant and/or the District shall not be liable for any damage so created unless such damage is caused by such party's willful misconduct or gross negligence.

b. **Drainage Easements.** Easements for installation and maintenance of utilities, stormwater retention/detention ponds, and/or a conservation area are reserved as may be shown on the Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in



the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Declarant is responsible. Declarant hereby reserves for the benefit of Declarant and any builder a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or any builder to correct or maintain any drainage facilities within the Property.

c. **Temporary Completion Easement.** All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, any builder, their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent thereto, provided that such easement shall terminate twelve (12) months after the date such burdened Lot is conveyed to the Owner by the Declarant or a builder.

d. **Universal Easements.** The Owner of each Lot (including Declarant so long as Declarant is the Owner of any Lot) is hereby granted an easement not to exceed three (3) feet in width over all adjoining Lots for the purpose of accommodating any encroachment or protrusion due to engineering or fence line errors, trees, landscaping or retaining wall located along property lines, errors in original construction, surveying, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachment, protrusion, settling or shifting; provided, however, that in no event shall an easement for encroachment or protrusion be created in favor of an Owner or Owners of said encroachment or protrusion occurred due to willful misconduct of said Owner or Owners. In addition, the Owner of each Lot is hereby granted an easement for encroachments not to exceed three (3) feet in width by misplaced fences or fence lines and overhanging roofs, eaves or other improvements as originally constructed over each adjoining Lot and for the maintenance thereof. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.

e. **Utility and Telecommunication Utility Easements.** The Declarant hereby reserves the right to grant perpetual, non-exclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Property designated on the Plat thereof for easements for the purpose of ingress, egress, installation, replacement, repair, maintenance, use and operation of any and all utility and service lines and service systems, public and private, including, without limitation, telephone, cable, fiber optic and any other cable or wiring system designed to provide or deliver communication of any form, video or telecommunications, computer access, "Internet" or e-mail access, security monitoring or other services to any Owner. The Declarant also reserves the right to grant perpetual, non-exclusive easements for the benefit of Declarant or its designees across and over any portion of the Property for the purpose of delivering satellite, "broadband", cellular or other wireless communication designed to provide or deliver communication of any form, video or telephone



communications, computer access, "Internet" or e-mail access, security monitoring or other services to any Owner.

Declarant, for itself and its designees, reserves the right to retain or transfer title to any and all wires, pipes, conduits, lines, cables, transmission towers or other improvements installed on or in such easements and to enter into franchise or other agreements with private or public providers of telecommunication type packages that are designed to provide such services to the Development.

**4.17 EPA Compliance.** The Owner of each Lot agrees to comply with all EPA rules and regulations regarding erosion control and compliance with a Storm Water Pollution Prevention Plan affecting the Lots (the "Plan") which will include elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA under the National Pollutant Discharge Elimination System. Each Owner acknowledges that the Declarant and any homebuilder will not bear any responsibility for complying with a Plan on any Lot upon the sale of each Lot in the Subdivision.

**4.18 Soil Movement.** Each Owner acknowledges that the failure or excessive movement of any foundation of any Home in the Subdivision can result in the diminished value and overall desirability of the entire Development. Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each Home in the Development. Each Owner also acknowledges that the long term value and desirability of the Development is contingent upon each Owner maintaining their Home so that no structural failure or excessive soil movement occurs within the Development.

EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN TEXAS IN GENERAL AND THE DEVELOPMENT IN PARTICULAR AND THE CONDITION OF THE LOTS MAY RESULT IN THE SWELLING AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PREVENT SOIL MOVEMENT.

If the Owner fails to exercise the necessary precautions, damage, settlement, movement or upheaval to the foundation may occur. Owners are highly encouraged to install and maintain proper irrigation around their Home or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Home.

By each Owner's acceptance of a warranty deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledge that the developer, Declarant and all homebuilders in the Subdivision shall not be responsible or liable for any damage, settlement, movement or upheaval to the foundation or any other part of the residence constructed on said Lot and hereby releases and forever discharges, developer, all homebuilders in the Subdivision and Declarant, and their respective shareholders, members, officers, directors, partners, employees, agents, representatives, affiliates, attorneys, successors and assigns, of and from any and all claim for the relief and/or causes of actions, liabilities, damages and claims whatsoever, known or unknown direct or indirect, arising from or relating to the foundation

and/or the residence constructed upon the Lot, including but not limited to any damage thereto caused by and/or related in any fashion to the soil condition upon which the same are constructed, the presence of groundwater and any other subsurface condition affecting the Lot and/or from the failure or improper or uneven watering of the Lot, inadequate grading or drainage facilities to carry water away from the foundation, or planting of improper vegetation near the foundation or any action which affects the drainage of any Lot.

The Owner of each Lot, and the Owner's legal representatives, successors and assigns, shall assume all risk and consequences to the residential structure, including but not limited to those arising or relating to the subsurface and surface soil condition in and around the Lot, the failure of the Owner or any other person or entity to exercise prudent maintenance procedures and/or the Owner's negligence in protecting and maintaining the integrity of the foundation and structure of the residence.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand this the 14 day of April, 2003.

**KB HOME LONE STAR LP, a Texas limited partnership**

By: KBSA, Inc., a Texas corporation, its general partner

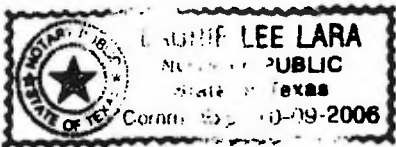
By: [Signature]

Name: John H. Zinsmeyer

Title: Assistant Secretary

The State of Texas           §  
  §  
County of Travis           §

This instrument was acknowledged before me on the 14 day of April, 2003, by John H. Zinsmeyer as Assistant Secretary of KBSA, Inc., the general partner of KB Home Lone Star LP, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he has executed the same for the purposes and consideration and in the capacity therein expressed on behalf of said corporation and said limited partnership.



[Signature]  
Notary Public, State of Texas

**After Recording Return To:**  
KB Home Lone Star LP, Attn: Legal Department  
4800 Fredericksburg Road, San Antonio, Texas 78229

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

04-17-2003 09:31 AM 2003085262  
BAZANJ \$43.00  
DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS