

**SUPPLEMENTARY DECLARATION OF COVENANTS  
AND RESTRICTIONS FOR  
AUSTIN'S COLONY, PHASE 18**

STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF BRAZOS       §

That, CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas Limited Partnership (herein) sometimes "Declarant" and "Developer"), by Highland Interests, Inc., a Texas Corporation, its General Partner, acted for herein by Grant J. Carrabba, Assistant Vice-President, the owner of all that certain tract of land lying and being situated in the John Austin League, A-2, City of Bryan, Brazos County, Texas, which has heretofore been platted and subdivided into that certain subdivision known as AUSTIN'S COLONY, PHASE 18, according to a plat of record in Volume 15270, Page 41, of the Official Public Records of Brazos County, Texas (the "Subdivision"); hereby impresses upon the Subdivision the following declaration of restrictions:

1. Land Use and Building Type

All Lots shall be utilized for single family residential purposes only and shall not be utilized for any other purpose. The term "residential purposes" as used herein, excludes, among other prohibited uses and structures, hospitals, clinics, duplex houses, apartment houses, boarding houses, hotel and commercial and professional uses, whether conducted from homes, residences, or otherwise, and all such uses of the Lots are expressly prohibited. In addition, there shall be no mobile homes, modular homes or structures of similar construction permitted. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling not to exceed two

and one-half stories in height and a private garage for not more than three cars and permitted accessory structures.

## 2. Architectural Control

The Architectural Control Committee is composed of three (3) members, whose names are:

- (a) DAVID S. CARRABBA
- (b) MARK J. CARRABBA
- (c) GRANT J. CARRABBA

A majority of the Committee may designate a representative to act for it. In the event of death, resignation, or failure or refusal to serve of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its representatives shall be entitled to any compensation for services performed pursuant to this covenant. The herein granted powers and duties of the Architectural Control Committee shall cease and terminate ten (10) years after the date of this instrument, and approval required by this paragraph shall not thereafter be required unless, prior to said date, the then record owners of a majority of the Lots subject hereto shall execute and file for record an instrument appointing a representative or representatives, who shall thereafter exercise the same powers and duties granted herein to the Architectural Control Committee. All plans and specifications for any improvements upon any Lot must be submitted to and approved by the Architectural Control Committee before construction commences. The Committee's approval or disapproval as required herein, shall be in writing. If the Committee, or its designated representatives, fails to give written approval or disapproval within thirty (30)

days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin construction of improvements is filed within fifteen (15) days after the commencement of construction, approval will not be required. The Committee, at its sole discretion, is hereby permitted to approve deviations in building area and location in the instances where, in its judgment, such deviations will result in a more commonly beneficial use. Such approval must be granted in writing and when given will become a part of these Restrictions.

### 3. Dwelling Size and Construction

The livable area of each main residential structure, exclusive of open or screened porches, open terraces, garages, or detached servants quarters, shall not be less than 1,800 square feet for each Lot in Phase 18. It shall also have at least a 2-car garage with a minimum opening of sixteen feet (16'). No detached permanent out buildings shall be constructed upon any Lot except upon approval of the Architectural Control Committee. Such buildings, if allowed by the Architectural Control Committee, shall only be constructed with the materials permitted by paragraph fourteen (14) below.

### 4. Building Location

No building shall be located on any Lot nearer to the front lot line or nearer to the side street lot line than the minimum building setback lines shown on the recorded plat, nor nearer than twenty-five feet (25') to the front lot line (excepting the setback shall be twenty feet (20') on a lot that has a front lot line with an arc as a result of a 'bulb' on a cul de sac), nor nearer than seven and one half feet (7.5') to the side or interior lot line. No fence shall be located on any Lot nearer to the front lot line than the front building setback.

All fences shall be approved by the Architectural Control Committee as to materials, location and appearance.

#### 5. Facing of Residences

Residences on corner Lots shall face the street from which the greater building line setback is shown on the recorded plat.

#### 6. Antennae and Signals

No antennae or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without the prior written approval of the Architectural Control Committee, except that the Developer or the Association may erect a common television antenna, cable system or similar reception device, provided same shall not rise more than five feet above the roofline of any structure. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot so as to unreasonably interfere with the reception of television or radio signals on any other Lot.

#### 7. Insurance Rates

Nothing shall be done or kept on the Subdivision property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the improvements located thereon without the prior written approval of the Architectural Control Committee.

#### 8. Lighting

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable

security or landscape lighting that has the approval of the Architectural Control Committee.

#### 9. Repair of Improvements

All improvements within the Subdivision, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

#### 10. Mailboxes

Mailboxes shall not be placed on any lot. A community mailbox will be provided at a central location in the subdivision. It will conform to postal service regulations for such boxes, and access will be provided by the United States Postal Service.

#### 11. Nonliability of Architectural Control Committee Members

Neither the Architectural Control Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of or in connection with the performance of the Architectural Control Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Control Committee or its members, as the case may be. Neither the Architectural Control Committee nor any member thereof shall be liable to any Owner due to the construction of any improvements within the Subdivision, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.

#### 12. Variances

Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots in the Subdivision, variance from any restrictions set out in this Declaration may be granted by a unanimous

decision of the Architectural Control Committee in a written instrument to be duly acknowledged and recorded in the Official Public Records of Brazos County, Texas, if and when such a variance shall ever be granted.

### 13. Governmental Agency Approval

Nothing in this Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any improvement on any Lot.

### 14. Building Materials & Fences

The main residential structures shall have not less than seventy-five percent (75%) of the exterior wall areas constructed of brick, stone or masonry products (exclusive of products like hardi-plank and hardi-panel) approved by the Architectural Control Committee. No metal buildings shall be permitted in the Subdivision. The Architectural Control Committee may modify this requirement when the design and appearance as proposed, are deemed to be of such nature as to be equally attractive and permanent. Roofing materials shall be architectural type shingles, and no three-tab shingles shall be permitted. All fencing shall be of wood, brick, wrought iron or stone, and no chain link or mesh fencing shall be permitted unless it is in a location not visible from a street roadway, or adjoining Lot. Fence plans shall be submitted to the Architectural Control Committee for approval. Notwithstanding anything herein to the contrary, specific fence restrictions apply to the the following lots: Block 1, Lots 6-16 and Block 2, Lots 1-14. Specifically, each of the foregoing lots are required to erect all wood fencing in such a manner so that the "finished", "smooth" side of the fence (not the "inside", "rails and posts side" of the

fence) is facing out towards all applicable adjoining easements and streets, if visible from the street.

#### 15. Lot Area and Width

No Lot or Lots within the Subdivision may be resubdivided or in any way reduced in size for any purpose without written permission of the Architectural Control Committee.

#### 16. Nuisance and Hazardous Conditions or Activity.

No noxious or offensive activity shall be permitted upon any Lot, nor shall anything be done thereon, or in any residence, which may be or become an annoyance or nuisance to the neighborhood. No Lot owner shall permit any dangerous condition or allow any hazardous activity to be conducted on any Lot or the public common areas of the Subdivision.

#### 17. Temporary Structures

No structures of a temporary character, including, but not limited to, a trailer, tent, shack, mobile home, recreational vehicle, garage (except for living quarters contained therein for bona fide servants), or other out-buildings, shall be used on any Lot at any time as a residence, either temporarily or permanently. No barn or basement shall be built on any Lot as a part of the improvements.

#### 18. Yard Appearance

All lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owners and occupants of all Lots shall keep all weeds and grass thereon cut. In no event shall any Lot be used for storage of material and equipment except for normal residential requirements incident to construction of improvements thereon as herein permitted. The Owners shall not permit the accumulation of garbage, trash, or rubbish

thereon. All clotheslines, yard equipment, woodpiles or storage piles (where permitted by these restrictions) shall be kept screened by a service yard, drying yard or other similar facility as herein otherwise provided, so as to conceal them from view from neighboring lots, streets or other property.

#### 19. Landscaping and Maintenance of Lawns and Plantings

(a) All homes must have the entire frontyard and sideyards landscaped. Each homeowner must plant two (2) native shade trees in the front portion (i.e., in front of the house) of each Lot within one hundred twenty (120) days of the substantial completion of the residence. Each tree must be either Bradford Pear, a native Texas oak variety, or similar trees common to the area; at least two inches (2-in.) caliper, and planted at the proper depth. All landscaping must be completed no later than 120 days after the house is completed. All landscape plans and specifications (including plant type, size, and location) must be approved by the Committee. At least eight (8) one gallon size shrubs shall be planted on each Lot. Grass may be either bermuda, buffalo, Zoysia, or St. Augustine.

(b) Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Trees, shrubs, vines, and plants that die shall be promptly removed and replaced. Declarant, the Association, and the Architectural Control Committee shall have the right at any reasonable time after not less than ten (10) days notice to Owner and an opportunity to cure any violation of this provision, to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass or other plantings located thereon, and to



charge the cost thereof to the Owner of the Lot, according to the provisions hereinafter set out.

#### 20. Unsightly Articles, Vehicles

No trailer, recreational vehicle, commercial truck or van, tent, boat or stripped down, wrecked, junked or wholly inoperable vehicle shall be kept, parked, stored or maintained on any portion of the driveway or front yard in front of the building line of the permanent structure; and same shall be kept, parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street.

#### 21. Mobile Homes, Travel Trailers

No mobile homes shall be parked or placed on any Lot at anytime, and no travel trailers shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

#### 22. Parking of Vehicles

Overnight parking on the public streets within the Subdivision of vehicles or trailers owned by or under the control of residents of the Subdivision is prohibited. All trucks and other vehicles weighing in excess of one ton shall not be parked in the Subdivision unless they are not visible from a street, roadway, or adjoining lot.

#### 23. Signs and Window Screens

No signs of any kind on any Lot shall be displayed to the public view on any Lot except as approved by the Architectural Control Committee. One small sign advertising

the Lot for sale or rent, or a sign used by a builder to advertise the Lot (and improvements thereon) during the construction and sales period are permitted. No foil, paper, cardboard, plywood, newspaper, or other unsuitable materials will be allowed to screen or cover windows or openings, either internally or externally, except for emergencies.

#### 24. Oil and Mining Operations

No drilling for oil or gas or oil and gas development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or under any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon or, in or under any Lot. No derrick or other structure designed for Use in boring for oil or gas shall be erected, maintained, or permitted upon any Lot.

#### 25. Livestock and Poultry

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that not more than two (2) dogs, or two (2) cats or one (1) dog and one (1) cat or other household pet may be kept provided that they are not kept, bred, or maintained for any commercial purposes.

#### 26. Garbage and Refuse Disposal

No Lot shall be used or maintained as a dumping ground or storage for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

#### 27. Land Near Parks and Water Courses

No building shall be placed, nor shall any material or refuse be placed or stored, on any Lot within twenty feet (20) of the property line of any park or edge of any open

water course, except that clean dirt fill may be placed nearer to such provided that the natural water course is not altered or blocked by such fill.

#### 28. Sewage Disposal and Water Supply

No water well, cesspool or other individual sewage system shall be constructed or used on any Lot. Each Lot Owner must use the water and sewer services provided by State, County, Municipal or other government authorities.

#### 29. Air Conditioning Units

Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed. In no event, however, shall a window air conditioning unit be installed in any dwelling so as to be visible from the front of any Lot or any adjoining street.

#### 30. 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.

#### 31. Solar Energy Devices

No system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar generated energy (Solar Energy Devices) may be installed on any Lot except (i) on the roof of the main residential structure or permitted associated structures in a location not visible from any street and positioned on the roof so as not to be higher than the roofline and to be in conformity with the slope of the roof or (ii) inside the fenced yard of the Lot at a height not to exceed the fence line height.

### 32. Flags and Flagpoles

No Lot may have installed upon it more than one flagpole. Flagpoles may not be larger than 6" in diameter and thirty (30') feet in height. Flagpoles may be illuminated by not more than one 300 watt outdoor lamp which must be directed only upward to illuminate the flag. All flagpoles must comply with applicable zoning ordinances, easements and setbacks of record and be constructed of permanent, long lasting material which is harmonious with the main residential structure. Only the following flags may be displayed on permitted flagpoles:

- (a) flag of the United States;
- (b) flag of any state of the United States;
- (c) official or replica flags of the branches of the U.S. Armed Forces;
- (d) flags of any university or college located within the U.S.

### 33. Terms

These covenants and restrictions are to run with the land and shall be binding on all owners of lots in AUSTIN'S COLONY, PHASE 18, and all persons claiming under them for twenty-five (25) years from the recording hereof, after which time, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots is filed for record in Brazos County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part.

### 34. Rights of Mortgagees

Any violation of any of these easements, agreements, restrictions, reservations or covenants contained herein shall not have the effect of impairing or affecting the rights of

any mortgagee, guarantor, or trustee under any mortgage or Deed of Trust existing and of record against any Lot, at the time that the easements, agreements, restrictions, reservations, or covenants are violated; provided, however, such mortgagees, guarantors and trustees, and their successors and assigns, shall be bound hereby should they become the owner of any Lot in the Subdivision.

### 35. Enforcement

The covenants, reservations, easements and restrictions set out herein are for the benefit of the undersigned, their heirs, successors, and assigns, and equally for the benefit of any subsequent Owner of any Lot or Lots in AUSTIN'S COLONY, PHASE 18, its, his or her heirs, executors, administrators, successors and assigns. Accordingly, all of the covenants, restrictions, easements, and reservations contained herein shall be construed to be covenants running with the land, enforceable at law or in equity, by any one or more of said of said parties.

### 36. Severability

The invalidity, abandonment or waiver of any one of these covenants, reservations, easements and restrictions shall in no wise affect or impair the other covenants, reservations, easements and restrictions which shall remain in full force and effect.

### 37. Easements

There are dedicated permanent and unobstructed easements as shown on the recorded plat of AUSTIN'S COLONY, PHASE 18, across, upon, under and through certain designated portions of various Lots therein, reserved to construct and maintain drainage easements, water, telephone, electric light services and other public utilities,

which said easements shall be a burden and charge against such lots in AUSTIN'S COLONY, PHASE 18.

In particular, but not by way of limitation, permanent easements presently exist across portions of the Subdivision in favor of Atmos Energy (successor to Lone Star Gas Company) and Brazos Electric Power Cooperative, Inc. Limitations and restrictions regarding use, improvements and plantings within the easement areas exist within the recorded easements and on the plat of the Subdivision. By virtue of the acceptance of title to any Lot within the Subdivision, the Owner of such Lot, and any builder or contractor of any improvements or plantings in or upon such Lot, assume responsibility for familiarizing themselves with the content of the limitations and restrictions relative to use of the easement areas on the Lot. The Owner and each contractor or builder performing work or plantings on a Lot shall assure that all permanent improvements (inclusive of fencing, access gates, temporary structures, pools, concrete aprons, playground equipment, landscaping, and shrubbery) shall not be placed or constructed within the easement areas, except following Owner contact with the holders of the easements and compliance by Owner with the easements' limitations and restrictions relative to placement of such improvements and plantings. Notwithstanding the foregoing, no tree shall be planted within any such easement without the written consent of the holder of the easement.

### 38. Reservations

The following language, reservations and easements shall be considered a part of, and be construed as being adopted in (whether or not expressly stated therein) each

and every contract, deed or other conveyance executed, or to be executed, in the conveyance of the various Lots in AUSTIN'S COLONY, PHASE 18:

"It is agreed and understood that the conveyance of any lot or parcel of land in said subdivision by contract, deed or other conveyance shall not in any event be held or construed to include the title to the water, gas or sewer lines, electric light, electric power or telegraph or telephone lines, poles or conduits or other utilities or appurtenances thereto constructed in AUSTIN'S COLONY, PHASE 18, along, under, or upon any portion of the streets, drives, lands, roads, easements and reserve areas shown on the plat of said subdivision, and the ownership and the right to maintain, repair, sell or lease such lines, utilities and appurtenances is hereby expressly reserved in and to the Developer and/or third party public utility providers assigned such easements and utility infrastructure."

#### 39. Occupancy Restriction

No residence on any Lot may be occupied by any person except (i) the Owner, (ii) persons legally related to one or more Owners, and one other person who is not related to the Owners, or (iii) one nuclear family that is a tenant of the Owner and not related to the Owner, but no other unrelated persons.

#### 40. Homeowners Association of Austin's Colony

(a) Declarant has formed a nonprofit Texas corporation known as HOMEOWNERS ASSOCIATION OF AUSTIN'S COLONY (or other similar and suitable name). The Owner of each Lot in Austin's Colony Phase 18, shall be, by virtue of his ownership of property in such Subdivision, and by virtue of these restrictions, a member

of said Association. The membership of said Association shall be limited to the Owners of Lots in any lands included by Declarant in the Association. The purpose of said corporation is to regulate, manage and otherwise control the preservation, use, maintenance, repair and rehabilitation of the Structures and Features. In furtherance of said purpose, the Declarant as owner and developer of the property comprising Austin's Colony, Phase 18, hereby declares that said subdivision, shall be and is hereby subject to, and shall hereafter be subject to, the following covenants:

(b) Definitions. The following words when used in this Declaration of Restrictions or any Supplemental Declaration of Restrictions (unless the context shall prohibit) shall have the following meanings:

(1) Association shall mean and refer to HOMEOWNERS ASSOCIATION OF AUSTIN'S COLONY (or a non-profit Texas corporation of similar name and with a corporate purpose consistent herewith).

(2) "The Properties shall mean and refer to all such existing properties, and additions thereto, as are subject to these restrictions or any supplemental restrictions under the provisions of paragraph (c) below.

(3) "Structures and Features" shall mean:

(A) A decorative brick and/or cedar fence, six feet (6') high, situated on each side of Settler's Way and commencing south of the intersection of Settler's Way and Austin's Colony Parkway and extending in a northeasterly direction through Austin's Colony, Phase III, and shall also mean and include future extensions, if any, of said fence along Settler's Way, Austin's Colony Parkway, and/or other streets in Austin's Colony Subdivision as Declarant or the Association may determine.



(B) Decorative brick entry ways delineating the Austin's Colony Subdivision, one such entry way being situated at the intersection of Austin's Colony Parkway and Boonville Road and other such entry ways being situated in Austin's Colony Subdivision (which may include any additional such decorative entry ways that may be constructed at public entries into Austin's Colony Subdivision).

(4) "Lot" shall mean and refer to any plot of ground shown upon any recorded map and plat of Austin's Colony, Phases I, II, III, IV, V-A, VI, 7A, 7B, 7C, 8A, 8B, 9, 10, 11A, 11B, 11C, 12A, 13, 14, 15, 16, 17, 18 and 19, and any other tracts which may be added to the Austin's Colony Homeowner's Association by Declarant, intended for use as a construction site for a single family dwelling as provided in these restrictions.

(5) "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(6) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Section 40, hereof.

(c) Properties subject to this Declaration, Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Supplementary Declaration is located in the State of Texas, County of Brazos, City of Bryan, and is the property described as Austin's Colony Phase 18.

(d) Additions to Existing Property. The Declarant, its successors and assigns, shall have the right to bring within the scheme of this paragraph 40, additional properties

thereby subjecting such additional lands to this paragraph, by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this paragraph to such property. Members of the Association agree that as said additions are made, that said Association will accept same pursuant to the terms and conditions of this paragraph. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this paragraph as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this paragraph. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this paragraph as to the existing property. These Supplementary Declarations are filed for the purpose of making the lands covered by these covenants and declarations subject to the rules and regulations of the Austin's Colony Homeowners Association.

(e) Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member.

(f) Voting Rights. The Association shall have two (2) classes of voting membership.

(1) Class A. Class A Members shall be all those Owners as defined in subparagraph (e) with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by

subparagraph (e) above. When more than one (1) person holds such interest or interests in any Lot, their vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(2) Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by subparagraph (e), provided that the Class B Membership terminates when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B Membership. From and after the happening of these events, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in which it holds the interest required for membership under subparagraph (e) above.

(3) Members' Meetings. Meetings of Members, both annual and special, composition of the Board of Directors, meetings of the Board of Directors, regular and special, and duties of the Board of Directors will be as prescribed in the By-Laws adopted by the Members.

(g) Members' Easements of Enjoyment. Subject to the provisions of Paragraph (i) of this Section 40, every Member shall have a right and easement of enjoyment in and to the Structures and Features; and such easement shall be appurtenant to and shall pass with the title to every Lot. The foregoing applies to both existing and additional lands in Austin's Colony Subdivision, in that all the Structures and Features are for the use of all Members when and if such other land is developed in accordance with the provisions contained herein.

(h) Title to Structures and Features. The Developer may retain the legal title to the Structures and Features until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey the Structures and Features to the Association at the time seventy percent (70%) or more of the total development of all phases of Austin's Colony Subdivision have been sold by the Developer.

(i) Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(1) The right of the Developer and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of preservation, maintenance, repair and rehabilitation, and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender shall have a right, after taking possession thereof, to assess fees for such purposes until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(2) The right of the Association to take such steps, as are reasonably necessary to protect the above-described properties against foreclosure; and

(3) The right of the Association to dedicate or transfer all or any part of the Structures and Features to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3)

of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

(j) Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (i) monthly assessments or charges; (ii) special assessments for capital repairs and rehabilitations, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (iii) special assessments as provided for herein relating to maintenance of lawns and plantings as set out in these covenants. The assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on said Lots and shall be a continuing lien thereon, together with such interest thereon, and cost of collection thereof, as hereinafter provided.

(k) Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of preservation, maintenance, repair and rehabilitation of the Structures and Features for the benefit and enjoyment of the Members of the Association, including, but not limited to, the payment of taxes and insurance thereon and for the cost of the labor, equipment, materials, management and supervision thereof, but excluding repair, maintenance and replacement of any property that is privately owned.

(l) **Basis and Maximum of Monthly Assessments.** Beginning the first day of the calendar month after which the Structures and Features are completed, the monthly assessments on each Lot belonging to a Member other than Developer, shall be Five Dollars (\$5.00). Thereafter, the monthly assessment may be increased by the Board of Directors of the Association in an amount not to exceed Twelve Dollars (\$12.00) per month. Any increase beyond Twelve Dollars (\$12.00) per month must be approved by the membership pursuant to subparagraph (n), below. The Board of Directors of the Association may, after consideration of all relevant factors, fix the assessments at a lesser amount.

(m) **Special Assessments.** In addition to the monthly assessments authorized herein, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any maintenance, repair or rehabilitation of the Structures and Features, or any part thereof, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(n) **Change in Basis and Maximum of Monthly Assessments.** Subject to the limitations herein, the Association may change the maximum assessment fixed herein (prospectively) for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all

Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(o) Quorum for Any Action Authorized Subparagraph (m) and (n) above. The quorum required for any action authorized by subparagraph (m) and (n) above shall be determined in the following manner: at the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth herein, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(p) Date of Commencement of Special Assessment. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

(q) Duties of the Board of Directors. The Association shall upon demand at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(r) Effect of Non-Payment of Assessment: The Personal Obligation of the Owner, The Lien; Remedies of the Association. If the assessments are not paid on the date when due, then such assessment shall be conclusively deemed delinquent and shall, together with such interest thereon, and cost of collection thereof, as hereinafter provided,

become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency date, at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint or petition in such action. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with the costs of the action.

(s) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon The Properties and Lots subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

(t) Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:



(1) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(2) The Structures and Features as defined in subparagraph 40(b)(3), hereof;

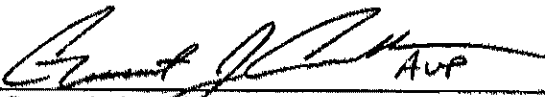
(3) Notwithstanding any provisions herein, no land or improvements devoted to dwelling use, subject to subparagraph (t)(4) below, shall be exempt from said assessments, charges and liens.

(4) Neither the Developer nor any Lots owned by the Developer shall be subject to the monthly or special assessments, charges or liens hereby created.

EXECUTED this the 10<sup>th</sup> day of April, 2019.

CARRABBA FAMILY LIMITED  
PARTNERSHIP, is a Texas Limited  
Partnership

By: Highland Interests, Inc., a Texas  
corporation, its General Partner

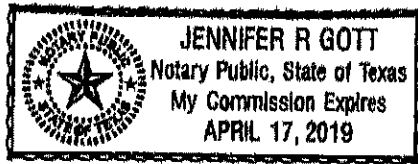
By  AVP  
Grant J. Carrabba, Assistant Vice-President

STATE OF TEXAS

§  
§  
§

COUNTY OF BRAZOS

THIS INSTRUMENT was ACKNOWLEDGED before me this 16<sup>th</sup> day of April, 2019, by Grant J. Carrabba, Assistant Vice-President of Highland Interests, Inc., a Texas corporation, on behalf of said corporation, as General Partner of Carrabba Family Limited Partnership, a Texas limited partnership, on behalf of said partnership.



*Jennifer R Gott*

NOTARY PUBLIC, State of Texas

RECORDING PAID FOR BY:  
AFTER RECORDING RETURN TO:

PREPARED IN THE LAW OFFICE OF:  
HOELSCHER, LIPSEY, ELMORE, POOLE & TURNBILL, P.C.  
1021 University Drive East  
College Station, Texas 77840  
MRH/BRL/RE/CARRABBA/AUSTIN'S COLONY DEC 18

SUPPLEMENTARY DECLARATIONS OF COVENANTS AND RESTRICTIONS FOR AUSTIN'S COLONY  
PHASE 18

CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas Limited Partnership by Highland Interests, Inc., a  
Texas corporation, its General Partner  
to THE PUBLIC