

**AMENDED, RESTATED, AND CONSOLIDATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
for  
AUSTIN'S COLONY**

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STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

This AMENDED, RESTATED, AND CONSOLIDATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR AUSTIN'S COLONY (the "Declaration") is made effective as of the date of recording in the Official Public Records of Brazos County, Texas.

WHEREAS, that instrument entitled, "Declaration of Covenants and Restrictions of Austin's Colony, Phase I" was recorded in Volume 2073, Page 23 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase I, according to a plat of record in Volume 2070, Page 109 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Declaration of Covenants and Restrictions of Austin's Colony, Phase II" was recorded in Volume 2450, Page 69 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase II, according to a plat of record in Volume 2441, Page 198 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Declaration of Covenants and Restrictions of Austin's Colony, Phase III" was recorded in Volume 2760, Page 298 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase III, according to a plat of record in Volume 2756, Page 207 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplemental Declaration to Covenants and Restrictions of Austin's Colony, Phase III" was recorded in Volume 7808, Page 220 of the Deed Records, Brazos County, Texas and imposed certain additional covenants and restrictions on that subdivision known as Austin Colony, Phase III; and

WHEREAS, that instrument entitled, "Declaration of Covenants and Restrictions for Austin's Colony, Phase IV" was recorded in Volume 3286, Page 1 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony, Phase IV, according to a plat of record in Volume 3278, Page 303 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 5A" was recorded in Volume 3729, Page 301 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 5A, according to a plat of record in Volume 3726, Page 24 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase VI" was recorded in Volume 3744, Page 205 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony, Phase VI, according to a plat of record in Volume 3718, Page 195 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 7A" was recorded in Volume 3991, Page 88 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony, Phase 7A, according to a plat of record in Volume 3971, Page 181 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 7B & Phase 7C" was recorded in Volume 4232, Page 23 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony, Phase 7B & Phase 7C, according to a plat of record in Volume 4184, Page 109 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 8A" was recorded in Volume 4851, Page 38 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony, Phase 8A, according to a plat of record in Volume 4838, Page 203 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 8B" was recorded in Volume 5443, Page 26 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 8B, according to a plat of record in Volume 5380, Page 284 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions of Austin's Colony, Phase 9" was recorded in Volume 6314, Page 144 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 9, according to a plat of record in Volume 6302, Page 15 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phases 10A and 10B" was recorded in Volume 7916, Page 50 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony, Phases 10A and 10B, according to a plat of record in Volume 7912, Page 21 of the Official Public Records of Brazos County, Texas;

and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phases 11A and 11C " was recorded in Volume 8898, Page 163 of the Deed Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phases 11A and 11C, according to a plat of record in Volume 8892, Page 22 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 11B" was recorded in Volume 9531, Page 58 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 11B, according to a plat of record in Volume 9530, Page 86 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 12A" was recorded in Volume 10595, Page 193 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 12A, according to a plat of record in Volume 10515, Page 291 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 13" was recorded in Volume 11980, Page 10 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 13 according to a plat of record in Volume 11978, Page 70 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 14" was recorded in Volume 13340, Page 1 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 14, according to a plat of record in Volume 13332, Page 32 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 15" was recorded in Volume 13339, Page 255 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony's, Phase 15, according to a plat of record in Volume 13332, Page 32 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 16" was recorded in Volume 14062, Page 46 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin Colony's, Phase 16, according to a plat of record in Volume 14057, Page 262 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 17" was recorded in Volume 14062, Page 72 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions

on that subdivision known as Austin's Colony, Phase 17, according to a plat of record in Volume 14057, Page 262 of the Official Public Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 18" was recorded in Volume 15276, Page 5 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 18, according to a plat of record in Volume 15270, Page 41 of the Official Records of Brazos County, Texas; and

WHEREAS, that instrument entitled, "Supplementary Declaration of Covenants and Restrictions for Austin's Colony, Phase 19" was recorded in Volume 14829, Page 1 of the Official Public Records, Brazos County, Texas and imposed certain covenants and restrictions on that subdivision known as Austin's Colony, Phase 19, according to a plat of record in Volume 14825, Page 165 of the Official Records of Brazos County, Texas; and

WHEREAS, the respective Declaration of Covenants and Restrictions or Supplementary Declaration of Covenants and Restrictions for each phase of Austin's Colony shall be collectively referred to herein as the "Original Declarations"; and

WHEREAS, the respective Phases of Austin's Colony,, along with any amended plats, supplemental plats, or replats thereto, and any additional property that has been or may be subjected to the requirements of this Declaration, as it may be amended or supplemented, shall be collectively referred to herein as the "Property" or the "Subdivision";

WHEREAS, the Original Declarations each provide they may be altered, rescinded, or modified in whole or in part by an instrument signed by a majority of the then owners of the lots and filed of record in Brazos County, Texas; and

WHEREAS, the undersigned owners who represent a majority of the current owners of the lots of each respective phase in Austin's Colony desire to amend and restate the Original Declarations and to adopt and impose this Amended, Restated, and Consolidated Declaration of Covenants, Conditions, and Restrictions for Austin's Colony on the Property; and

WHEREAS, when recorded, this Amended, Restated, and Consolidated Declaration of Covenants, Conditions, and Restrictions of Austin's Colony shall amend, restate, consolidate, and supersede the Original Declarations.

NOW, THEREFORE, a majority of the current owners of the lots of each respective phase of the Property hereby approve and adopt this Amended, Restated and Consolidated Declaration of Covenants, Conditions, and Restrictions for Austin's Colony (the "Declaration") and declare all of the Property shall be held, sold, conveyed and occupied subject to the covenants, conditions, easements, restrictions, liens, and charges which shall all run with the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors, and assigns, which shall inure to the benefit of each Owner.

**ARTICLE I**  
**DEFINITIONS**

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

A. Architectural Control Committee. "Architectural Control Committee" or "ACC" shall mean the committee appointed by the Board of Directors of the Association to review and approve plans for the exterior construction of Improvements on the Property.

B. Architectural Guidelines. "Architectural Guidelines" shall mean the guidelines, rules and regulations adopted by the Board of Directors, as the same may be amended from time to time.

C. Articles. "Articles" shall mean Articles of Incorporation of Austin's Colony Homeowners Association of Bryan, Inc., as that instrument may be amended from time to time.

D. Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of the Declaration.

E. Association. "Association" shall mean Austin's Colony Homeowners Association of Bryan, Inc., a Texas nonprofit corporation.

F. Board. "Board" shall mean the Board of Directors of the Association.

G. Bylaws. "Bylaws" shall mean the Bylaws of the Association, which may be from time to time amended by the Board of Directors.

H. Common Areas. "Common Areas" shall mean any land within the Property conveyed, leased, dedicated, or assigned to the Association, with the Association's consent, for maintenance and operation, including, but not limited to, easements, roads, entryways, roadways, rights-of-ways, parkways, median strips, sidewalks, parks, recreational areas, pavilions, walking trails, tennis courts, swimming pools, water features, trails, paths, ponds, creeks, and the decorative brick and/or cedar fences, situated on each side of Settler's Way, commencing south of the intersection of Settler's Way and Austin's Colony Parkway and extending in a northeasterly direction through Austin's Colony, including future extensions, if any, of said fences along other streets in the Subdivision the Association may determine, and those decorative brick entry ways delineating the Subdivision, that have been or may in the future be constructed at public entrances into the Subdivision.

I. Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

J. Developer. "Developer" shall mean Carrabba Family Limited Partnership, a Texas limited partnership, its successors or assigns.

K. Improvement. "Improvement" shall mean any Residential Dwelling, building, structure, fixture, or fences, any transportable structure placed on a Lot, whether or not affixed to the land, and any addition to, or modification of an existing Residential Dwelling, building, structure, fixture or fence on a Lot.

L. Lot. "Lot" or "Lots" shall mean each of the Lots shown on a recorded Plat.

M. Member. "Member" or "Members" shall mean each Owner who is a Member of the Association as provided in Article V hereof.

N. Mortgage. "Mortgage" shall mean a security interest, mortgage, deed of trust, or lien instrument granted by an Owner to secure the payment of a loan made to such Owner, duly recorded in the Official Public Records of Brazos County, Texas, and creating a lien or security interest encumbering a Lot and some or all improvements thereon.

O. Owner. "Owner" or "Owners" shall mean a person or persons, firm, corporation or other entity or any combination thereof that is the record owner of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as a security for the performance of an obligation.

P. Plans. "Plans" shall mean the final construction plans and specifications (including a related site plan) of any Residential Dwelling or other Improvement of any kind proposed to be erected, placed, constructed, maintained or altered on a Lot.

Q. Plat or Plats. "Plat or Plats" shall refer to the plat for a specific phase of Austin's Colony, that is now or may in the future be subjected to the provisions of this Declaration and recorded in the Official Public Records of Brazos County, Texas, and any replat of such plat.

R. Property or Subdivision. "Property" or "Subdivision" shall mean that real property in Brazos County, Texas which is identified in the Recitals hereof as all phases of Austin's Colony, and any additional property that is subjected to the requirements of this Declaration, as it may be amended or supplemented.

S. Residential Dwelling. "Residential Dwelling" shall mean the single family residence and appurtenances constructed on a Lot.

## **ARTICLE II**

### **USE RESTRICTIONS**

A. General. The Property shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration, all of which run with and bind the Lots.

B. Land Use and Building Type. Each Lot and the Residential Dwelling thereon shall be utilized for single family residential purposes only. The term "single family residential purposes" as used herein, specifically prohibits, without limitation, the use of a Lot for hospitals, clinics, duplex houses, apartment houses, boarding houses, hotel, motel, bed and

breakfast, multi-family use, daycare, or for any business, professional or other commercial activity of any type unless such business, professional or commercial activity is unobtrusive and merely incidental to the primary use of the Lot and the Residential Dwelling on the Lot for residential purposes. As used herein, the term “unobtrusive” means, without limitation, that there is no business, professional, or commercial related sign, logo or symbol displayed on the Lot; there is no business, professional or commercial related sign, logo or symbol displayed on any vehicle on the Lot; there are no clients, customers, employees or the like who go to the Lot for any business, professional or commercial related purpose on any regular basis; and the conduct of the business, professional, or commercial activity is not otherwise apparent by reason of noise, odor, vehicle and/or pedestrian traffic and the like.

There shall be no mobile homes, modular homes, or structures of similar construction permitted on a Lot. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family Residential Dwelling, not to exceed two and one-half (2½) stories in height, a private garage for at least two (2) but not more than three (3) passenger vehicles, and permitted accessory structures. A garage may not be enclosed or used as living quarters.

No Owner may use or permit such Owner's Lot or the Residential Dwelling or other Improvement on the Lot to be used for any purpose that would (i) void any insurance in force with respect to the Community; (ii) make it impossible to obtain any insurance required by this Declaration; (iii) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion; (iv) constitute a violation of the provisions of this Declaration or any applicable law or (v) unreasonably interfere with the use and occupancy of the Subdivision by other Owners.

An Owner of a Lot is entitled to lease the Lot only for single family residential purposes. No Owner is permitted to lease the Owner's Lot for hotel or transient purposes. For purposes of this Section, a lease term that is less than twelve (12) months is deemed to be a lease for hotel or transient purposes. Posting a listing of a Lot or Residential Dwelling on sites such as HomeAway, AirBNB, or VRBO is a violation of this restriction. Every lease must provide that the lessee is bound by and subject to all of the obligations under this Declaration and a failure to do so shall be a default under the lease. The Owner who leases his/her Lot is not relieved from any obligation to comply with the provisions of this Declaration by virtue of the lease. An Owner is not permitted to lease a room in the Residential Dwelling or other structure on the Owner's Lot or any portion less than the entirety of the Lot and the Residential Dwelling and other Improvements on the Lot.

C. Residential Dwelling Size and Construction. The livable area of each Residential Dwelling, exclusive of open or screened porches, open terraces, garages, or detached guest quarters, shall not be less than the square footage listed below for each respective phase. Each Residential Dwelling shall also have a garage with a functional door for at least two (2) but not more than three (3) passenger vehicles with a minimum door opening of sixteen feet (16'). No detached permanent outbuildings shall be constructed upon any Lot except upon approval of the Architectural Control Committee. Such buildings shall only be constructed with the materials as permitted by this Declaration and with the written approval of the Architectural Control Committee.

The minimum square footage requirement for each respective Phase of the Subdivision is as follows:

MINIMUM SQUARE FOOTAGE REQUIREMENTS

|   |               |               |
|---|---------------|---------------|
| Phase I   | 1,700 sq. ft. |               |
| Phase II  | 1,700 sq. ft. |               |
| Phase III   | 1,400 sq. ft. |               |
| Phase IV  | 1,700 sq. ft. |               |
| Phase 5A  | 1,700 sq. ft. |               |
| Phase VI:   |               |               |
| Lots 1 & 2, Block 1                                 |               | 2,200 sq. ft. |
| Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, & 13, Block 1 |               | 2,400 sq. ft. |
| Lots, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, & 11, Block 2  |               | 2,200 sq. ft. |
| Phase 7A:   |               |               |
| Lots 10 & 11, Block 4                               | 1,800 sq. ft. |               |
| Lots 22-25, Block 1                                 | 1,800 sq. ft. |               |
| Lots 12-15, Block 2                                 | 2,000 sq. ft. |               |
| Lots 6-21, Block 3                                  | 1,700 sq. ft. |               |
| Phase 7B  | 2,200 sq. ft. |               |
| Phase 7C  | 2,000 sq. ft. |               |
| Phase 8A  | 1,700 sq. ft. |               |
| Phase 8B  | 1,700 sq. ft. |               |
| Phase 9:  |               |               |
| Lots 11-36  | 1,700 sq. ft. |               |
| Lots 1-10   | 2,000 sq. ft. |               |
| Phases 10A & 10B:                                   |               |               |
| Lots 1-31   | 1,700 sq. ft. |               |
| Lots 39-59  | 1,700 sq. ft. |               |
| Lots 32-38  | 1,600 sq. ft. |               |
| Phases 11A & 11C:                                   |               |               |
| Lots 1-33, Bk 1, Phase A                            | 1,700 sq. ft. |               |
| Lots 16-22, Bk 2, Phase A                           | 1,700 sq. ft. |               |
| Lots 1-8, Bk 3, Phase C                             | 2,000 sq. ft. |               |
| Phase 11B   | 1,700 sq. ft. |               |
| Phase 12A   | 1,800 sq. ft. |               |
| Phase 13  | 1,800 sq. ft. |               |
| Phase 14  | 1,800 sq. ft. |               |
| Phase 15  | 1,800 sq. ft. |               |
| Phase 16  | 1,800 sq. ft. |               |
| Phase 17  | 1,800 sq. ft. |               |
| Phase 18  | 1,800 sq. ft. |               |
| Phase 19  | 1,700 sq. ft. |               |

For future Phases of the Subdivision that are subjected to this Declaration, the livable area of each Residential Dwelling, exclusive of open or screened porches, open terraces,



garages, or detached guest quarters, shall not be less than 1,800 square feet.

D. 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 a recorded Plat, nor nearer than the distances stated below for each respective Phase to the front lot line and side or interior lot line.

| <u>PHASE</u>     | <u>FRONT SETBACK</u> | <u>SIDE/INTERIOR LOT SETBACK</u> |
|------------------|----------------------|----------------------------------|
| Phase I          | 25 feet              | 5 feet                           |
| Phase II         | 25 feet              | 5 feet                           |
| Phase III        | 25 feet              | 5 feet                           |
| Phase IV         | 25 feet              | 5 feet                           |
| Phase 5A         | 25 feet              | 5 feet                           |
| Phase VI         | 25 feet              | 5 feet                           |
| Phase 7A         | 25 feet              | 5 feet                           |
| Phase 7B & 7C    | 25 feet              | 5 feet                           |
| Phase 8A         | 25 feet              | 5 feet                           |
| Phase 8B         | 25 feet              | 5 feet                           |
| Phase 9          | 25 feet              | 5 feet                           |
| Phases 10A & 10B | 25 feet              | 7 ½ feet                         |
| Phases 11A & 11C | 25 feet              | 7 ½ feet                         |
| Phase 11B        | 25 feet              | 7 ½ feet                         |
| Phase 12A        | 25 feet              | 7 ½ feet                         |
| Phase 13         | 25 feet*             | 7 ½ feet                         |
| Phase 14         | 25 feet*             | 7 ½ feet                         |
| Phase 15         | 25 feet*             | 7 ½ feet                         |
| Phase 16         | 25 feet*             | 7 ½ feet                         |
| Phase 17         | 25 feet*             | 7 ½ feet                         |
| Phase 18         | 25 feet*             | 7 ½ feet                         |
| Phase 19         | 25 feet*             | 7 ½ feet                         |

\*Except that the front setback shall be twenty feet (20') on a Lot that has a front Lot line containing an arc as a result of a "bulb" on a cul de sac.

For future Phases of the Subdivision that are subjected to this Declaration, the front setback shall be no less than 25 feet and the side/interior lot setback shall be no less than 7 ½ feet.

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.

D. Facing of Residential Dwellings. Each Residential Dwelling shall face the street adjacent to the Lot. For a corner Lot, the Residential Dwellings shall face the street on which the greater building line setback is shown on the applicable recorded Plat.

E. Antennas. Satellite dish antennas which are forty (40) inches or smaller in diameter

and antennas designed to receive television broadcast signals may be installed, provided they are installed in the least obtrusive location that allows reception of an acceptable quality signal. All other antennas are prohibited, unless expressly authorized by the Architectural Control Committee. As used herein "least obtrusive location" means a location that is not readily visible from the street in front of the Lot, or in the case of a corner Lot, the side street. The provisions of this Section are intended to be consistent with the Telecommunications Act of 1996 (the "Act") and FCC Regulations promulgated under the Act, as the same currently exist or may hereafter be amended; the provisions of this Section will be construed to be as restrictive as possible without violating the provisions of the Act or applicable FCC regulations.

F. Insurance. 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. Each Owner, tenant or other person occupying a Lot is responsible for insuring his or her Lot, Improvements, and personal property, and for insuring against the liability of such Owner, tenant, or other person. Further, each Owner is responsible for any costs incurred as a result of such Owner's negligence or misuse or the negligence or misuse of his family, tenants, guests, invitees, agents, employees, or any resident or occupant of his Residential Dwelling, and, by acceptance of a deed to a Lot, does hereby indemnify the Association, its officers, directors and agents, and all other Owners against any such costs.

G. Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot without Architectural Control Committee approval as to the type, location, and illumination. No exterior lighting may be directed toward another Lot or illuminate beyond the boundaries of the Lot on which the lighting fixture is located.

H. Maintenance of Improvements. No Residential Dwelling or Improvement on a Lot is permitted to fall into disrepair, and each such Residential Dwelling or other Improvement must at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner of the Lot at such Owner's sole cost and expense. The Board of Directors has the exclusive authority to determine whether an Owner is maintaining his or her Lot in a reasonable manner and the Board of Directors' reasonable, good faith determination will be conclusive and binding on all parties. In the event the Owner of a Lot fails to keep the exterior of an Improvement in good condition and repair, and such failure continues after ten (10) days written notice from the Association, or such longer period if required by law, the Association may at its option, without liability to the Owner or occupant of the Lot in trespass or otherwise, enter upon the Lot and repair and/or paint the exterior of the Improvement on the Lot and otherwise cause the Improvement to be placed in good condition and repair, and to do every other thing necessary to secure compliance with this Declaration. All costs incurred by the Association for such work may be charged to the Owner of the Lot. The Owner agrees to pay all costs, plus twenty-five percent (25%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such costs are secured by the lien created in Article VI of this Declaration. Interest thereon at the rate of ten percent (10%) per annum, or the maximum, non-usurious rate, whichever is less, will begin to accrue on such sum on the thirty-first (31st) day after a written invoice is delivered to the Owner.

I. Mailboxes and House Numbering.

1. The design of each mailbox must complement the Residential Dwelling and be constructed of brick or be a freestanding metal locking box. The house number displayed on the mailbox must be neat and attractive, and professional in design and appearance. No mailbox shall be installed on a wood post.
2. Each Residential Dwelling must be numbered in a manner that is visible from the street.

J. Building Materials and Fences. Each Residential Dwelling 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 HardiePlank and HardiePanel), which materials must be 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 composition shingles, and no three-tab shingles shall be permitted. Metal roofs are prohibited. The Architectural Control Committee shall have authority to determine whether the color of the proposed shingles complements the Residential Dwelling and is aesthetically consistent with other Residential Dwellings the Subdivision. All fencing shall be constructed of wood, brick, wrought iron, or stone, and no chain link, PVC pipe, or mesh fencing shall be permitted. Fence plans shall be submitted to the Architectural Control Committee for approval prior to construction or renovation of a fence. Wooden fence railings shall not be visible from outside the Lot; that is, the “good” side of the fence is to be facing out, away from the Lot, unless otherwise approved by the Architectural Control Committee.

K. Lot Area and Width. No Lot or Lots within the Subdivision may be re-subdivided or in any way reduced in size for any purpose without written permission of the Architectural Control Committee.

L. 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 Residential Dwelling, which may be or become an annoyance or nuisance to the neighborhood. No Owner shall permit any dangerous condition or allow any hazardous activity to be conducted on any Lot or the Common Areas of the Subdivision. Further, no rubbish or debris of any kind may be placed or permitted to accumulate on or adjacent to a Lot and no odors permitted to arise therefrom, so as to render the Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or to its occupants. Storage or dumping in any alley, easement, creek or pond is prohibited. For the purpose of this Section, a “nuisance” is deemed to be any activity or condition on a Lot which is reasonably considered to be an annoyance to surrounding residents of ordinary sensibilities or which might reduce the desirability of the Lot or any surrounding Lot.

M. Temporary Structures. No structures of a temporary character, including, but not limited to, a trailer, tent, shack, mobile home, recreational vehicle, garage, 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. Any temporary structure, such as a storage shed, requires approval of the Architectural Control Committee. Further, such

structures shall be constructed with composition shingles as roofing material.

N. Lot Maintenance. The Owner or occupant of a Lot must at all times maintain the grass, shrubs, trees, and landscape beds on the Lot in a sanitary, healthful, and attractive manner, and promptly remove and replace dead or dying plant material. Property maintenance includes periodic mowing, weeding, trimming, and pruning, as applicable, as well as irrigation. In no event may an Owner use the Owner's Lot for storage of materials and equipment (except for normal residential requirements or incident to construction of Improvements thereon as herein permitted) or permit the accumulation of garbage, trash, or rubbish of any kind thereon. An Owner may not burn anything on the Owner's Lot or in a street within the Subdivision; provided that, this provision shall not be construed to prohibit cooking on an outdoor pit. In the event the Owner or occupant of a Lot fails to maintain the Lot in a reasonable manner as required by this Declaration and such failure continues after ten (10) days written notice from the Association, or such longer period if required by law, the Association may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon the Lot and cause the Lot to be mowed, edged and cleaned, cause the landscaping beds to be weeded and cleaned, cause shrubs and trees to be trimmed or pruned, cause dead or diseased shrubs or trees to be removed, and to do every other thing necessary to secure compliance with this Declaration. All costs incurred by the Association for such work may be charged to the Owner of such Lot. The Owner agrees by the purchase or occupancy of such Lot to pay such costs, plus twenty-five percent (25%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such costs are secured by the lien created in Article VI of this Declaration. Interest thereon at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31st) day after a written invoice is delivered to the Owner.

O. Landscaping. A Residential Dwelling must have and maintain landscaping in the entire front yard and side yard. Each Owner must plant and maintain two (2) native shade trees in the front portion (i.e., in front of the house) of each Lot within ninety (90) days of the substantial completion of the Residential Dwelling. Each tree must be either Bradford Pear, a native Texas oak variety, or similar trees common to the area, at least four inches (4-in.) caliper and fifteen (15) gallon size and planted at the proper depth. All landscaping must be fully installed no later than ninety (90) days after the Residential Dwelling is completed. All landscape Plans and specifications (including plant type, size, and location) must be approved by the Architectural Control Committee. At least eight (8) five-gallon size shrubs shall be planted on each Lot in flowerbeds adjacent to the Residential Dwelling. Grass may be Bermuda, buffalo, Zoysia, or St. Augustine. Shrubs, trees, and other landscaping must not create a visual obstruction to traffic.

P. 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; further, all such vehicles that are kept, parked, stored or maintained on other portions of a Lot must be wholly within an enclosed structure or completely screened from view 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.

Q. Mobile Homes and Travel Trailers. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers shall be parked on or near any Lot so as to be visible from adjoining property or street for more than forty-eight (48) consecutive hours.

R. Parking of Vehicles. Vehicles parked on the street must be parked with the flow of traffic, that is, passenger side tires must be immediately adjacent to the curb or edge of the street. All trucks and other vehicles with a towing capacity in excess of one ton shall not be parked in the Subdivision unless they are not visible from a street, roadway, or adjoining Lot.

S. Signs and Window Coverings.

1. Signs. No sign may be displayed in public view on any Lot except the following, which must be ground-mounted: (1) one small sign advertising the Lot for sale or rent, (2) street signs and such other signs as required by law, (3) political signs as permitted by law and any policy adopted by the Board of Directors of the Association, (4) home security signs and school spirit signs, provided that, such they are not placed in a City-owned easement and are maintained in good condition, and (5) a garage sale sign that is displayed on the date of the garage sale only. Notwithstanding the foregoing, school spirit signs must be removed after one year, or when the student is no longer participating in the activity reflected by the sign. No sign may be attached to a fence, landscaping material, or utility pole.

2. Window Coverings. No foil, paper, cardboard, plywood, newspaper, or other unsuitable materials will be allowed to screen or cover windows or openings, either internally or externally.

T. 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.

U. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that not more than two (2) customary household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Wolf hybrid dogs are prohibited in the Subdivision.

V. 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 equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Trash receptacles must be kept on the side of the house and not in front of the garage except on trash collection days when such receptacles may be placed at the curb for collection for a reasonable period of time.

W. Land Near Parks and Water Courses. No Improvement 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. Storage of materials, debris, or other items in such areas is prohibited at all times.

X. Sewage Disposal and Water Supply. No water well, cesspool or other individual sewage system shall be constructed or used on any Lot. Each Owner must use the water and sewer services provided by state, county, municipal or other government authorities.

Y. Air Conditioning Units. Window and wall-mounted air conditioning units are prohibited in any Residential Dwelling or Improvement.

Z. Completion of Construction. No Residential Dwelling or other Improvement shall remain unfinished for more than ninety (90) days after the foundation has been poured. No building materials of any kind shall be placed or stored on a Lot more than fifteen (15) days in advance of the commencement of construction unless such materials are completely concealed from view from the street or adjacent Lots.

AA. 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. The Board of Directors may adopt policies related to solar energy devices in accordance with Section 202.010 of the Texas Property Code. Architectural Control Committee review of plans for solar energy devices is required; however, the Committee shall not withhold approval for installation of a solar energy device if the provisions of this Declaration are met or exceeded, unless the Committee determines in writing that placement of the device as proposed by the Owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

BB. Flags and Flagpoles. No Lot may have installed upon it more than one flagpole. The flagpole may either be installed in the yard of the property or securely attached to the Residential Dwelling. Flagpoles attached to the Residential Dwelling may not be greater than six feet (6') in length. Flagpoles installed in the yard of the property may not be larger than six inches (6") in diameter and twenty feet (20') 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:

- flag of the United States;
- flag of any state of the United States;
- official or replica flags of the branches of the U.S. Armed Forces;
- flags of any university or college located within the U.S.

The Board of Directors may adopt and amend policies related to flags and flagpoles in

accordance with Section 202.010 of the Texas Property Code.

CC. Playhouses and Play Equipment. Playhouses and play equipment require written approval of the Architectural Control Committee prior to installation. Playhouses must complement the Residential Dwelling and utilize composition shingles for roofing material. Basketball goals must be maintained in good condition with a full backboard and net installed at all times.

DD. Grandfathering Clause/Non-conformity. Any Lot, Improvement, or use of a Lot that is in violation of this Declaration as of the date the Declaration is filed of record in the Official Public Records of Brazos County, Texas ("Effective Date") will be considered nonconforming (a "Nonconformity"). A Nonconformity that complies with the Original Declaration applicable to a particular Lot on the Effective Date shall be grandfathered and may continue in legal existence as provided in this Section DD. A Nonconformity may be maintained, repaired, or cosmetically remodeled; however, if the Nonconformity is physically destroyed or demolished, any new construction on the Lot must be in compliance with all provisions of the Declaration. A Nonconformity shall lose its legal status and will no longer be grandfathered at such time as the Nonconformity is physically destroyed or demolished. Thereafter, the Nonconformity must cease and may not resume. The Board, in its sole discretion, may determine whether a Nonconformity ever existed or has ceased to exist.

### **ARTICLE III** **ARCHITECTURAL REVIEW**

A. Architectural Control Committee. The Architectural Control Committee is composed of three (3) members, all of whom shall be Members of the Association and appointed by the Board of Directors. Unless otherwise permitted by law, a current member of the Board, a current Board member's spouse, or a person residing in a current Board member's household may not serve as a member of the Architectural Control Committee. Members of the Architectural Control Committee may be removed at any time and shall serve until resignation or removal by the Board of Directors. The members of the Committee shall not be entitled to any compensation for services but are entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties, as the Board from time to time may authorize or approve. Provided that, if the duties of the Architectural Control Committee are assigned, in whole or in part, to an architect or other third party professional, the architect or other third party professional may be compensated for his/her services.

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 all requested Plans and specifications have been submitted to it, the Plans will be deemed approved. A decision by the Architectural Control Committee denying an application or request by an Owner for the construction of Improvements may be appealed to the Board, in accordance with the Chapter 209 of the Texas Property Code.

B. Nonliability for Architectural Control Committee Action. Neither the Architectural

Control Committee nor any member thereof, the Association, or any member of the Board of Directors 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. In reviewing a matter, the Architectural Control Committee does not inspect, guarantee or warrant the workmanship of the Improvement, including its design, construction, safety, whether structural or otherwise, conformance with building codes, or other governmental laws or regulations or whether the Improvement is suitable or fit for its intended purpose. 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.

C. Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any Lot or Lots in the Subdivision, a 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. Notwithstanding the foregoing, no variance is permitted to be given as to the requirements for single family residential use and construction on a Lot.

D. Estoppel Certificates. The Board of Directors, upon the reasonable request of any interested party and after confirming any necessary facts with the Architectural Control Committee, may furnish a certificate with respect to the approval or disapproval of an Improvement on a Lot or with respect to whether an Improvement on a Lot was made in compliance with the provisions of this Declaration. Any person, without actual notice of any falsity or inaccuracy of such a certificate, is entitled to rely on such a certificate with respect to all matters set forth therein.

E. 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.

#### **ARTICLE IV**

#### **RESERVATIONS AND EASEMENTS**

A. General. There are dedicated permanent and unobstructed easements as shown on the respective recorded Plats of the Property 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 the Property.

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 Plats 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.

B. 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 the Property:

“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 the Property, along, under, or upon any portion of the streets, drives, lands, roads, easements and reserve areas shown on the Plats 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, the Association, and/or third party public utility providers assigned such easements and utility infrastructure.”

C. 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.

D. Members' Easements of Enjoyment. Subject to the provisions the Declaration, every Member shall have a right and easement of enjoyment in and to the Common Areas; 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 which may be annexed into the Subdivision, in that all the Common Areas are for the use of all Members when and if such other land is developed in accordance with the provisions contained herein.

E. Title to Common Areas. The Developer may retain the legal title to the Common Areas 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 Common Areas 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.

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

1. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of preservation, maintenance, repair and rehabilitation, and in aid thereof to mortgage said Common Areas. 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 Common Areas against foreclosure; and
3. The right of the Association to dedicate or transfer all or any part of the Common Areas 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 in accordance with the notice requirements of Section 209 of the Texas Property Code.

## ARTICLE V

### AUSTIN'S COLONY HOMEOWNER'S ASSOCIATION OF BRYAN, INC.

A. Management by Association. The affairs of the Subdivision shall be administered by the Association. The Association has the right, power, and obligation to provide for the management, administration, and operation of the Subdivision as provided in this Declaration and the Articles of Incorporation, Bylaws, and Rules and Regulations. The business and affairs of the Association shall be managed by its Board of Directors. The Board may engage an entity or individual to perform the day to day functions of the Association and to provide for the management, administration, and operation of the Subdivision. The Association, acting through the Board, is authorized to enter into contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate, in the Board's sole discretion, to manage and operate the Subdivision in accordance with this Declaration, including without limitation, agreements relating to maintenance, trash pick-up, repair, administration, patrol services, traffic, operation of recreational facilities, or other matters affecting the Subdivision.

B. Membership. The Association has mandatory membership. Each Owner of a Lot, whether one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become and shall remain a Member of the Association until his ownership ceases for any reason, at which time membership in the Association shall automatically cease.

Membership in the Association is appurtenant to ownership of a Lot, shall automatically follow the ownership of each Lot, and may not be separated from ownership of a Lot.

C. Voting Rights.

1. The Association shall one (1) class of voting membership. One (1) vote is allocated to each Lot.
2. No Member is be entitled to vote at any meeting of the Association until the Owner has presented evidence of ownership of a Lot in the Community to the Secretary of the Association. 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. Fractional votes and split votes are not permitted. All Members of the Association may attend meetings of the Association and all Members may exercise their vote at such meetings either in person or by proxy or absentee ballot.

D. Meetings of Members. Meetings of Members, both annual and special, shall be held at such place and time and on such dates as specified or provided in the Bylaws.

E. Board Actions in Good Faith. Any action, inaction or omission by the Board made or taken in good faith shall not subject the Board or any individual member of the Board to any liability to the Association, its Members, or any other party.

F. Authority of Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of its power as are expressly set forth in this Declaration and Texas law. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers at all times:

1. Rules and Bylaws. To make, establish and promulgate, and in its discretion, to amend or repeal and re-enact, such Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions, including but not limited to enforcement of the provisions contained in this Declaration.
2. Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
3. Records. To keep books and records of the Association's affairs.
4. Assessments. To levy and collect Assessments as provided in Article VI of this Declaration.

G. Right of Enforcement. If an Owner fails to bring a Lot and/or Improvements into compliance with the Declaration after written demand made in accordance with the

requirements of the Texas Property Code, the Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the names of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Declaration. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the governing documents of the Association.

The Board may institute, defend, settle or intervene on behalf of the Association in litigation, administrative proceedings, binding or non-binding arbitration or mediation in matters pertaining to (a) Common Areas or other areas in which the Association has or assumes responsibility pursuant to the provisions of this Declaration, (b) enforcement of this Declaration or any Rules and Regulations, or (c) any other civil claim or action. However, no provision in this Declaration or the Articles of Incorporation or Bylaws shall be construed to create any independent legal duty to institute litigation on behalf of or in the name of the Association.

H. Fines. The Association, acting through the Board, has the authority to levy and collect fines against Owners for any violation of the Declaration which is not cured by the Owner within a reasonable time, provided that notice is given as required by law. Fines may be assessed repeatedly for continuing violations. Fines shall be uniform according to a fine policy established and amended from time to time by the Board.

I. Legal and Accounting Services. The Board has authority to retain and pay for legal and accounting services necessary or proper for the operation of the Association.

J. Professional Management. The Board has the authority to retain, hire, employ or contract with such professional management companies or personnel as the Board deems appropriate to perform the day to day functions of the Association and to provide for the administration and operation of the Community as provided for in this Declaration and the Bylaws.

K. Implied Rights and Board Authority. The Association may exercise any right or privilege given to it expressly by the provisions of this Declaration or its Certificate of Formation or Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership except where any provision in this Declaration, the Articles of Incorporation, the Bylaws, or applicable law specifically requires a vote of the membership.

L. Standard of Conduct. The Board of Directors, the officers of the Association, and the Association have the duty to represent the interests of the Owners in a fair and just manner. Any act or thing done by any Director, officer, or committee member taken in furtherance of the purposes of the Association, and accomplished in conformity with the Declaration, Articles of Incorporation, Bylaws, and the laws of the State of Texas, shall be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing will not be a breach of duty on the part of the Director, officer, or committee member if taken or done within the exercise of their discretion and judgment. The Business Judgment

Rule means that a court shall not substitute its judgment for that of the Director, officer, or committee member. A court shall not re-examine the decisions made by a Director, officer, or committee member by determining the reasonableness of the decision as long as the decision is made in good faith and in what the Director, officer, or committee member believed to be in the best interest of the Association.

## **ARTICLE VI**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

A. 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) annual assessments, which the Board of Directors may permit to be paid in equal monthly installments or charges; and (ii) special assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments and special assessments, together with interest, late fees, fines, costs of collection, and reasonable attorney's fees as hereinafter provided, shall be a charge on said Lots and shall be a continuing lien on the Lot or Lots, as hereinafter provided.

B. Purpose of Assessment. The assessments levied by the Association shall be held, managed, invested, and expended by the Board, in its sole discretion, for the benefit of the Subdivision and Owners of Lots. The Board may, by way of illustration and not by way of limitation, expend the assessments for the administration, management, and operation of the Subdivision and Association, for the maintenance, repair, and improvement of the Common Areas, for the maintenance of any easements granted to the Association, the payment of taxes and insurance thereof, for the enforcement of the provisions of this Declaration by actions at law or in equity, or otherwise, and the payment of court costs as well as reasonable and necessary legal fees, and for all other purposes that are, in the discretion of the Board, desirable to enhance the character and desirability of the Subdivision.

C. Basis and Maximum Annual Assessments. Beginning January 1<sup>st</sup> of the year after this Declaration is recorded, the annual assessment shall be One Hundred Sixty-Five and No/100 Dollars (\$165.00). Thereafter, the annual assessment may be increased by the Board of Directors of the Association in an amount not to greater than ten percent (10%) of the prior year's annual assessment. Any increase beyond ten percent (10%) above the prior year's annual assessment must be approved by two-thirds (2/3) of the votes of Members present and voting in person or by proxy or absentee ballot at a meeting duly called for this purpose. Written notice of such meeting must be given to Members in accordance with the Bylaws.

D. Special Assessments. If the Board of Directors at any time or from time to time determines the annual assessments for any period are insufficient to provide for the continued operation of the Subdivision or any other purposes contemplated by this Declaration, the Board may propose a special assessment in an amount deemed necessary to provide for such continued maintenance and operation of the Subdivision, provided that any such special assessment shall have the assent of two-thirds (2/3) of the total votes of Members present and voting in person or by proxy or absentee ballot at a meeting duly called for this purpose at which a quorum is present. For the purpose of this section only a quorum shall be at least sixty

percent (60%) of the votes of all Members. Written notice of such meeting must be given to Members in accordance with the Bylaws. The due date of any special assessment shall be fixed in the resolution authorizing such special assessment.

E. Notice of Sums Owning. Upon the written request of an Owner, the Association may provide to such Owner a written statement setting out the then-current total of all assessments and other sums, if any, owed by such Owner with respect to the Owner's Lot. In addition to the Owner, the written statement from the Association may also be addressed to and be for the benefit of a prospective lender or purchaser of the Lot, as same may be identified by the Owner to the Association in the written request for such information. .

F. Effect of Non-Payment of Assessments. The annual assessments charged against each Lot shall be due and payable, in advance, on the first (1st) day of each January following the recordation of this Declaration, and each January 1st thereafter. Any annual assessment or special assessment that is not paid and received by the Association within thirty (30) days of when it is due will be deemed delinquent, and, without notice, will bear interest at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, from the date originally due until paid. Further, the Board of Directors of the Association is authorized to impose a monthly late charge on any delinquent annual assessment or special assessment. The monthly late charge, if imposed, shall be in addition to, not in lieu of, interest. The Board of Directors has the discretion to permit monthly or quarterly payment of the annual assessment or any special assessment. Payment of the annual assessments and special assessments levied hereunder and any other sums due hereunder (including, without limitation, interest, late fees, fines, costs, attorney's fees or delinquency charges), are secured by the continuing lien created by the Original Declarations and continuing herewith upon and against each Lot and all Improvements thereon for the benefit of the Association, and superior title to each Lot is hereby reserved in and to the Association. Each Owner, by acceptance of a deed to his Lot, expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid annual assessments, special assessments and all other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens by judicial foreclosure. At any foreclosure, the Association is entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. The collection of annual assessments, special assessments, and other sums due hereunder may also be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, late charges, costs and attorney's fees, shall be chargeable to and be a personal obligation of the defaulting Owner.

G. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereinafter placed upon the 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.

H. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges, and lien created herein:

1. all property 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 Common Areas;
3. Lots owned by the Developer; and
4. all other property owned by the Association.

Notwithstanding the foregoing, upon conveyance by Developer of a Lot to a builder or other purchaser, the annual assessment for the current year and any outstanding special assessments for such year must be paid in full at closing without proration of same.

## **ARTICLE VII MISCELLANEOUS**

A. Term. This Declaration will remain in full force and effect until January 1, 2040, and will be extended automatically for successive ten (10) year periods; provided, however, that the provisions of this Declaration may be terminated on December 31, 2040, or on the commencement of any successive ten (10) year period by filing for record in the Official Public Records of Brazos County, Texas, an instrument in writing signed by Owners representing not less than ninety percent (90%) of the Lots. In addition, termination of this Declaration requires written consent of the holders of first Mortgages representing not less than a majority of Lots on which first Mortgages exist as of the date of recordation of the termination document.

B. Amendment. This Declaration may be amended in whole or in part by the recording in the Official Public Records of Brazos County, Texas an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment(s) and certifying that such amendment(s) have been approved by Owners entitled to cast a majority of the total outstanding votes in the Association.

C. Annexation of Additional Lands of Developer. Until December 31, 2040, the Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional contiguous properties, described as additional phases of Austin's Colony, thereby subjecting such additional lands to the Declaration, by filing of record a Supplemental Declaration of Covenants and Restrictions ("Supplemental Declaration") which shall extend the covenants, conditions and restrictions of the Declaration to such land. Such instrument must be approved and acknowledged by the Board of Directors of the Association, as indicated by the signature of the President or Secretary of the Association on the instrument, prior to the recording of such Supplemental Declaration. By its joinder in this Declaration, Developer acknowledges and agrees that, prior to recording a Supplemental Declaration, the following conditions must be met with regard to each additional phase: such lands must be described in a recorded plat by the name "Austin's Colony, Phase [ ]", roadways must be

completed, dedicated to, and accepted by the City of Bryan, Texas, wet and dry utilities must be completed, easements and reserves must be mowed, cleared of debris, wire, materials and construction supplies, and any other conditions required in writing by the Association must have been met. The additional land must be mowed and maintained in a neat and attractive condition by Developer until all Lots are sold to owners other than builders. Conveyance of common areas within a new phase by Developer to the Association shall require written approval of the Board of Directors. The Board of Directors has the sole discretion to accept such conveyance and determine if the common areas are in an acceptable condition, which shall require, by way of example and not limitation, leveling the property, and clearing it of debris and other materials. Members of the Association acknowledge and agree that as said additions are made, the Association will accept such additions pursuant to the terms and conditions of the Declaration. Such Supplemental Declaration may contain complementary additions and modifications of the covenants 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 the overall scheme and plan of development of the Property for single family residential use and construction. In no event, however, shall such Supplemental Declaration revoke, modify or add to the covenants established to the then-existing Property.

D. Rights of Mortgagee. Any violation of any of these easements, agreements, restrictions, 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 outstanding against a Lot, at any times that the easements, agreements, restrictions, reservations or covenants are violated.

E. Enforcement.

1. Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, or the Association acting through the Board of Directors shall have the right to enforce any and all of the provisions of the Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. Notwithstanding the foregoing, an Owner may not enforce assessments or liens in favor of the Association.

2. Nonwaiver. The failure to enforce any provision of the Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

3. Fines. Provided that notice and an opportunity to be heard are provided in accordance with the requirements of the Texas Property Code and any policies of the Association, the Association may impose fines against an Owner for violations of this Declaration and the Dedicatory Instruments of the Association. Fines will be the personal obligation of the Owner and will be secured by the Assessment lien, and collectible in the same manner as the lien for Assessments described in Article VI of this Declaration.

F. Dissolution. Upon termination of this Declaration, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or



consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

#### G. Construction.

1. Interpretation. The provisions of this Declaration shall be liberally construed to give effect to its purposes and intent. If this Declaration or any word, clause, sentence, paragraph, or other part thereof is susceptible to more than one conflicting interpretation, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and the general plan of development established by this Declaration will govern.
2. Conflicts. In the event of a conflict in the Dedicatory Instruments that cannot reasonably be reconciled, this Declaration controls over any other Dedicatory Instruments, and other Dedicatory Instruments control in the following order of priority: (i) Articles of Incorporation; (ii) Bylaws; (iii) Policies and Rules; and (iv) all others.
3. Severability. The provisions of the Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
4. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.
5. Articles and Sections. All article and section headings used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles.
6. Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.
7. Number and Gender. Pronouns, whenever used herein, and of whatever gender, include natural persons and corporations, entities and associations of every kind and character, and the singular includes the plural, and vice versa, whenever and as often as may be appropriate.

H. Remedies. In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of this Declaration or the Rules and Regulations, the Developer, the Association, each Owner or occupant of a Lot within the Community, or any portion thereof, may institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover

monetary damages caused by such violation or attempted violation.

I. Delay in Enforcement. No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

J. Enforceability. The provisions of this Declaration shall run with the Property and shall be binding upon and inure to the benefit of and be enforceable by the Association, each Owner and occupant of a Lot in the Property, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. Provided that, only the Association is authorized to enforce the lien established in Article VI of this Declaration. If notice and an opportunity to be heard are given as provided by law, the Association is authorized to impose reasonable fines for violations of the provisions of this Declaration, or any Rules and Regulations adopted by the Association or the Architectural Control Committee pursuant to any authority conferred by either of them by the provisions of this Declaration and to collect reimbursement of actual attorney's fees and other reasonable costs incurred by it relating to violations of the provisions of such documents. Such fines, fees and costs will be added to the Owner's assessment account, secured by the lien, and collected in the manner provided in Article VI of this Declaration.

*[Signature Pages Follow.]*

**CERTIFICATION**

IN WITNESS WHEREOF, the undersigned, being the President of Austin's Colony Homeowners Association of Bryan, Inc., hereby executed this instrument to certify the foregoing Amended, Restated, and Consolidated Declaration of Covenants, Conditions and Restrictions for Austin's Colony was approved by Owners representing the votes of a majority of the current owners of the Lots of each respective phase in Austin's Colony, as evidenced by the signatures attached hereto, to become effective upon recording in the Official Public Records of Brazos County, Texas.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

THE STATE OF TEXAS     §  
  §  
COUNTY OF BRAZOS     §

BEFORE ME, the undersigned notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purpose and in the capacity therein expressed.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**JOINDER OF DEVELOPER**

The undersigned, being the authorized representative of CARRABBA FAMILY LIMITED PARTNERSHIP, a Texas limited partnership, which is the Developer, as that term is defined in the foregoing Amended, Restated and Consolidated Declaration of Covenants, Conditions and Restrictions of Austin’s Colony, does hereby consent to and join in said Amended, Restated and Consolidated Declaration of Covenants, Conditions and Restrictions of Austin’s Colony instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CARRABBA FAMILY LIMITED PARTNERSHIP,  
a Texas limited partnership**

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

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

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

THE STATE OF TEXAS     §  
  §  
COUNTY OF BRAZOS     §

BEFORE ME, the undersigned notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purpose and in the capacity therein expressed.

\_\_\_\_\_  
Notary Public in and for the State of Texas