

This Corrected Declaration of Covenants, Conditions, and Restrictions of Austin's Estates, Phases 4A and 4B, Subdivision is made and recorded to clarify setback requirements as set out in Article Four, Paragraph 4.3., of those certain declarations dated April 9, 2007, and recorded at Clerk's Document 00959782, in Volume 7916, Page 76, of the Official Public Records of Brazos County, Texas.

**CORRECTED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF AUSTIN'S ESTATES, PHASES 4A AND 4B, SUBDIVISION**

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

THAT WHEREAS, CARRABBA INTERESTS PARTNERSHIP, hereinafter called the Declarant, is the owner of all that certain real property located in Brazos County, Texas, which has heretofore been platted and subdivided into that certain subdivision known as Austin's Estates, Phases 4A and 4B, Subdivision according to plat of record in Volume 7912, Page 22, of the Official Records of Brazos County, Texas.

WHEREAS, the Declarant will convey the above described properties, subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth;

NOW THEREFORE, it is hereby declared that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title, or interest in or to the above described property or any part thereof, and their heirs, successors, and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each owner thereof.

**ARTICLE ONE**

**DEFINITIONS**

**Owner**

1.1 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot or portion of a lot on which there is or will be built a detached single family dwelling or commercial structure including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Properties**

1.2 "Properties" shall mean and refer to that certain real property herein described.

**Lot**

1.3 "Lot" shall mean and refer to that portion of any of the plots of land shown upon the plat and subdivision map recorded in Volume 7912, Page 22, of the Official Records of Brazos County, Texas. No lot, including resubdivided lots, shall contain not less than one (1.0) acre of land.

**ARTICLE TWO**

**ARCHITECTURAL CONTROL**

**Architectural Control Committee**

2.1 The architectural control committee is composed of three (3) members, whose names are:

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

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. 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 judgement, 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 .

#### Approval of Plans and Specifications

2.2 No house, building, fence, wall or other structure shall be commenced, erected, placed or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein be made, nor shall any landscaping of any Lot or Lots be undertaken, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the harmony of external design, dimensions, and location in relation to surrounding structures and topography.

#### Drainage

2.3 No building or structure shall be constructed on the property until provisions have been made for drainage of surface water to an offsite area without draining across adjacent property, with all drainage being into the street, road or natural drainage areas.

#### Failure of Committee to Act

2.4 In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of 30 days following such submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

#### Nonliability of Architectural Committee Members

2.5 Neither the Architectural Committee nor any member thereof shall be liable to any homeowner's association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of an obstruction of the view from such Owner's Lot or Lots.

### ARTICLE THREE

#### EXTERIOR MAINTENANCE

3.1 In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Developer or the Architectural Control Committee shall, after giving the lot owner fourteen (14) days written notice to remedy the problem, have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and exterior of the buildings and any other improvements erected thereon, all at the expense of Owner.

## **ARTICLE FOUR**

### **USE RESTRICTIONS**

#### **Type of Buildings Permitted**

4.1 All Lots shall be used for residential purposes only. No building shall be erected, constructed, altered, placed, or permitted to remain on any such Lot other than one detached single family dwelling with an enclosed two car garage and other building such as workshops, storage buildings or greenhouses provided their dimensions and exterior appearance are in harmony with the other structures in the subdivision.

#### **Minimum Floor Area and Exterior Walls**

4.2 Any residence constructed on any Lot in the subdivision shall have a minimum heated area of the main residence of two thousand one hundred (2,100) square feet.

#### **Setbacks**

4.3 No building may be placed on a lot nearer than 45 feet from the front property line, 45 feet from any street, and 15 feet from a rear property line. No building may be placed nearer than 20 feet from the side property line in Phase 4A, Block 1, Lots 1 through 15, and Phase 4B, Block 3, Lots 1 through 11. No building may be placed nearer than 25 feet from the side property line in all other Austin's Estates Phase 4A and 4B lots not specifically listed above. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, this shall not be construed to permit any portion of the building on any Lot to encroach upon another lot. If two or more Lots, or fractions thereof, are consolidated into a building site in conformity with the provisions of Paragraph 4.4, these building setback provisions shall be applied to such resultant building site as if it were one original, platted Lot.

#### Resubdivision or Consolidation

4.4 No residential lot shall be resubdivided in any fashion except that a Lot MAY be subdivided or consolidated with other lots into building sites, with the privilege of constructing improvements as permitted in Paragraphs 4.1, 4.2 and 4.3 hereof, on each resulting building site, provided that such subdivision or consolidation does not result in any building site having an area of not less than one (1.0) acre of land.

#### Easements

4.5 Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

#### Noxious or Offensive Activities Prohibited

4.6 No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which creates a dangerous condition in the subdivision or to persons within the subdivision.

#### Prohibited Residential Uses

4.7 No structure of a temporary character, trailer, mobile home, motor home, basement, tent, shack, garage or other outbuilding shall be used or placed on any Lot at anytime as a residence, either temporarily or permanently. Motor homes, trailers, and vehicles identified as being used for business purposes, including but not limited to trucks, delivery vehicles, and other commercial vehicles, may only be parked in the rear one-half of any lot where they are not visible from the street. They also must be parked on an all weather surface.

#### Signs

4.8 No signs of any character shall be allowed on any Lot except one sign of not more than five square feet advertising the property for sale or rent; provided, however, that Declarant and any other person or entity engaged in the construction and sale of residences within the subdivision shall have the right, during the construction and sales period, to construct and maintain such

facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas, and model units. The entrance sign to Austin's Estates, Phases 4A and 4B, Subdivision is excluded from these provisions and is and forever will be considered a permanent marking.

#### Rubbish, Trash and Garbage

4.9 No part of the property shall ever be used for outside, unenclosed storage of any type. The property shall be kept free and clear of weeds, and tall grass such as will be in keeping with other property in the development. No Lot shall be used as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers not readily visible from the street. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

#### Animals

4.10 Dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. Swine, poultry, and any type of fowl are specifically excluded from all Lots. One horse may be kept on any Lot provided the total number of animal units is not greater than the total acres in the Lot. No cows, sheep, or goats may be kept on any lot. Livestock raised for youth projects (such as FFA and 4-H) may be granted variance from these provisions subject to the prior approval of the Architectural Control Committee.

#### Prohibited Activities

4.11 No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot herein designated for residential purposes.

#### Building Materials

4.12 The main residential structures and garages shall not have less than seventy-five percent (75%) of their exterior wall areas constructed of brick or masonry. Other buildings may be constructed of brick or wood that harmonizes with the main residence. Non-corrugated metal siding may be used if landscaped with plants that cover fifty percent (50%) of the metal surface when planted. All outbuilding plans shall be submitted and approved by the Architectural Control Committee before construction commences.

#### Boundary Lines

4.13 The boundary lines of any Lot within the Properties shall be established according to the recorded plat of Austin's Estates Phases 4A and 4B Subdivision as it is now or may be hereafter amended, and the location of fences within the subdivision shall not alter or affect any such boundary lines.

### ARTICLE FIVE

#### GENERAL PROVISIONS

##### Enforcement

5.1 The Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions conditions, and reservations now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Declarant, or any owner, or the Architectural Control Committee may recover all reasonable and necessary attorneys fees and costs incurred with regard to any action brought to enforce these covenants, conditions, and restrictions if the Declarant, owner or Architectural Control Committee is the prevailing party in such action.



**Severability**

5.2 Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

**Duration and Amendment**

5.3 The covenants, conditions, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Declarant or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, and, unless amended as provided herein, shall be effective for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed by a majority of the owners, each voting one vote for each square foot of land owned by him. The covenants, conditions, and restrictions of this Declaration may be amended during the first twenty-five year period by an instrument signed by not less than 90% of the Lot Owners. There shall only be one vote per lot. Joint owners of a lot shall agree as to the manner in which their single vote shall be cast. During any succeeding ten (10) year period, the covenants, conditions, and restrictions of this Declaration may be amended during the last year of any such ten (10) year period by an instrument signed by not less than 75% of the Lot Owners, voting as previously set forth. No amendment shall be effective until recorded in the Official Records of Brazos County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

**Compliance with Governmental Regulations**

5.4 All owners of any lot in the subdivision shall comply with all governmental rules, regulations, ordinances, or other restrictions which relate to the property in the subdivision.

EXECUTED by the said Declarant this the 24<sup>th</sup> day of April, 2007.

CARRABBA INTERESTS, a Texas General Partnership, composed of Highland Interests, Inc., a Texas Corporation, and Carrabba Brothers, Ltd., a Texas limited partnership

By Mark J. Carrabba V.P.  
MARK J. CARRABBA, Vice-President of HIGHLAND INTERESTS, INC., and Vice President of Carrabba Brothers Holdings, L.L.C., General Partner of Carrabba Brothers, Ltd.

THE STATE OF TEXAS §  
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, on this day personally appeared MARK J. CARRABBA, Vice President of HIGHLAND INTERESTS, INC., and Vice President of CARRABBA BROTHERS HOLDINGS, L.L.C., INC., on behalf of said entities, in the capacity therein stated, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 24<sup>th</sup> day of April, 2007.

Barbara Riccar Lott  
NOTARY PUBLIC, State of Texas

br\re\carrabba\AustinEstates3A\4A&4B\Declaration



HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY

STATE OF TEXAS  
I hereby certify that this instrument was filed on the date and time stated hereon by me and was duly recorded in the volume and page of the Official Public records of

Document Number: 00960606  
Amount: 47.00  
Receipt Number - 314352  
By: Ashlie Peters

Filed for Record in:  
BRAZOS COUNTY  
On: Apr 25, 2007 at 08:17:10  
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