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**SECOND
AMENDED AND RESTATED
SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

**THE GARDENS AT CASTLEGATE
CASTLEGATE, SECTION 8**

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**SECOND
AMENDED AND RESTATED
SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
CASTLEGATE, SECTION 8**

This SECOND AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Second Supplemental Declaration") of Castlegate, Section 8, is made and effective as of the 29 day of August, 2007, by Greens Prairie Investors, Ltd, (sometimes referred to herein as the "Declarant"):

PREAMBLE

The SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - Castlegate, Section 8, effective December 17, 2002 was recorded in Volume 5014, Page 133 of the Official Records of Brazos County, Texas, and amended by the First Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions, Castlegate Section 8 effective March 28, 2003, recorded in Volume 5213, Page 227 of Official Records, Brazos County, Texas and the Second Amendment to Supplemental Declaration of Covenants, Conditions and Restrictions, Castlegate, Section 8, effective January 12, 2004, recorded in Volume 5820, Page 117 of Official Records Brazos County, Texas, (collectively, the "Original Supplemental Declaration"). The Amended and Restated Supplemental Declaration of Covenants, Conditions and Restrictions Castlegate, Section 8, effective August 10, 2005, was recorded in Volume 6866, Page 245, Official Records, Brazos County, Texas (the "Restated Declaration"). Pursuant to Section 12.04(a) of the Original Supplemental Declaration, the Declarant may amend the declaration and desires amend and replace the Original Supplemental Declaration with this AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS.

Declarant is the owner and developer of certain residential Lots within a 9.226 acre tract of land now commonly known and described as the Castlegate Subdivision, Section 8, and hereafter known as The Gardens of Castlegate, (which lots are more particularly described on the plat of Castlegate Subdivision Section 8, recorded in Volume 5002, Pages 152-153, Official Records of Brazos County, Texas). Declarant desires to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations. The purposes of this Second Supplemental Declaration are to: protect the Declarant and the Owners against inappropriate development and use of Lots within the Subdivision; provide use, maintenance and repair of compatibility of design of improvements within the Subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to encourage construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on the Property now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of The Gardens of Castlegate project. The restrictive covenants herein will preserve the best interests of the Declarant and the Owners and Residents of The Gardens of Castlegate (Castlegate Subdivision, Section 8) after completion of all development and construction therein.

The Gardens of Castlegate Owners Association, Inc. (the "Association") has been chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the various common areas within The Gardens of Castlegate, to assist with Lot maintenance as provided herein and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth with this Second Supplemental Declaration.

DECLARATION

The Declarant hereby declares that the Property, and such phases or additions hereto as may hereafter be made pursuant to Article 2 hereof, are and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to this Second Supplemental Declaration and the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to hereinafter as "the Covenants") set forth in this Supplement Declaration.

ARTICLE 1.

CONCEPTS AND DEFINITIONS

The following words, when used in this Second Supplemental Declaration or in any amended or supplementary declarations (unless the context shall otherwise clearly indicate or prohibit), shall have the following meanings:

1.01 "Amended Second Supplemental Declaration" shall mean and refer to each and every instrument recorded in the Official Records of Brazos County, Texas which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Second Supplemental Declaration.

1.02 "Annual Assessment" shall have the meaning specified in Article 5 below.

1.03 "Architectural Review Committee" (sometimes referred to herein as the "ARC") shall mean and refer to the committee which is described in Article 6 of the Declaration.

1.04 "Articles" shall mean and refer to the Articles of Incorporation (and amendments thereto and restatements thereof) of the Association on file with the Secretary of State of Texas.

1.05 "Assessable Property" shall mean and refer to each and every lot, within the Property which: (i) the Declarant has subjected to and imposed upon a set of restrictive covenants calling for the payment of an Annual Assessment to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number by the Central Appraisal District ("CAD") or a similar governmental agency; and (iii) is not designated an "open space" or otherwise a portion of the Common Properties. The Declarant proposes to cause each residential Lot within the Property to constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude any non-residential Lot from the concept of "Assessable Property" and/or to prescribe a different assessment and/or valuation scheme(s) for any non-residential Lot.

1.06 "Association" shall mean and refer to The Gardens of Castlegate Owners Association, Inc., a non-profit Texas corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Property and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within Castlegate Subdivision, Section 8.

1.07 "Board" shall mean and refer to the Board of Directors of the Association.

1.08 "Bylaws" shall mean and refer to the Bylaws of the Association, as adapted and amended from time to time.

1.09 "Castlegate Development" shall mean the real property located in the City of College Station, Brazos County, Texas, subject to the Declaration and of which Castlegate, Section 8 is a part.

1.10 "Central Appraisal District" ("CAD") shall mean and refer to the governmental and/or quasi-governmental agency(ies) (including without limitation the Central Appraisal District of Brazos County) established in accordance with Texas Tax Code Section 6.01 et seq. (and its successor and assigns as such law may be amended from time to time) or other similar statute which has, as one of its purposes and functions, the establishment of an assessed valuation and/or fair market value for various lots, parcels and tracts of land in Brazos County, Texas.

1.11 "Common Properties" shall mean and refer to any and all areas of land within the Property which are known, described or designated as common areas, private streets, gate house and gate apparatus, parks, recreational easements, floodway easement areas, lakes, ponds, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easement, greenbelts, open spaces, paths and trails, and the like including without limitation those shown on any recorded subdivision plat of portions of the Property as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The concept of Common Properties will also include: (i) any and all public right-of-way lands within the Property for which the City of College Station has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, hike and bike trails, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by the Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. Declarant may convey record title or easements to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties (particularly along the edges) and to execute any open space declarations applicable to the Common Properties which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

1.12 "Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Second Supplemental Declaration.

1.13 "Declarant" shall mean and refer to Greens Prairie Investors, Ltd. and any successor(s) and assign(s) of Greens Prairie Investors, Ltd., with respect to the voluntary disposition of all (or substantially all) of the assets and/or ownership interests of Greens Prairie Investors, Ltd., and/or the voluntary disposition of all (or substantially all) of the right, title and interest of Greens Prairie Investors, Ltd. in and to the Property. However, no person or entity merely purchasing one or more Lots from Greens Prairie Investors, Ltd. in the ordinary course of business shall be considered a "Declarant".

1.14 "Declaration" shall mean the "Declaration of Covenants, Conditions and Restrictions for Castlegate", recorded in Volume 4090, Page 0088, Official Records of Brazos County, Texas, together with any and all amendments or supplements thereto.

1.15 "Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

1.16 "Development Period" shall mean a period commencing on the date of the recording of this Second Supplemental Declaration in the Official Records of Brazos County, Texas and continuing thereafter until and ending on the earlier to occur of: (i) substantial completion of all development (including without limitation the completion and sale of all Lots in the Subdivision to third parties) on the

Property; (ii) the tenth (10th) anniversary of the date of recordation of this Second Supplemental Declaration in the Official Records of Brazos County, Texas; or (iii) the date determined by Declarant to be the end of the Development Period.

1.17 "Dwelling Unit" shall mean and refer to any building or portion of a building situated upon the Property which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

1.18 "Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article 10 below.

1.19 "Exempt Property" shall mean and refer to the following portions of the Property: (i) all land and Improvements owned by the United States of America, the State of Texas, Brazos County, the City of College Station or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (iii) all land and Improvements which are not only exempt from the payment of ad valorem real property taxes by the City of College Station, Brazos County, the College Station Independent School District, and the State of Texas, but also are exempt from the payment of any assessment hereunder as expressly determined by written resolution of the Declarant and/or the Association all Lots owned by Declarant; and (iv) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of annual Assessments in accordance with a special resolution of the Board.

1.20 "Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve month period.

1.21 "Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

1.22 "Lot" shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the Official Records of Brazos County, Texas and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

1.23 "Member" shall mean and refer to each Resident who is in good standing with the Association and who has filed a proper statement of residency with the Association and who has complied with all directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a Member of the Association.

1.24 "Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

1.25 "Payment and Performance Lien" shall mean and refer to the lien described within Sections 5.08 and 5.09 of Article 5 hereinbelow.

1.26 "Property" shall mean and refer to the land described as Castlegate Subdivision Section 8, College Station, Texas, according to plat recorded at Volume 5002, Pages 152-153, in the Official Records of Brazos County, Texas.

1.27 "Resident" shall mean and refer to:

- (a) each owner of the fee simple title to any Lot within the Property;
- (b) each person residing on any part of the Assessable Property who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and
- (c) each individual lawfully and permitted by these Covenants to be domiciled in a Dwelling Unit, other than Owner or bona-fide lessee.

1.28 "Second Supplemental Declaration" shall refer to this instrument, once recorded.

1.29 "Structure" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (iv) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the Architectural Review Committee.

1.30 "Subdivision" shall mean and refer to the Castlegate Subdivision, Section 8, a subdivision of certain land as described on the plat thereof recorded in Volume 5002, Pages 152-153 of the Official Records of Brazos County, Texas, as well as any and all revisions, modifications, corrections, or clarifications thereto.

1.31 "Taxing Authorities" shall mean and refer to Brazos County, the College Station Independent School District, the City of College Station and the State of Texas and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates.

1.32 "Trustee" shall mean and refer to that certain individual (s) or entity (ies) designated or appointed from time to time and at any time by the Association to perform the duties and responsibilities described within Section 5.09 of Article 5 below, and its successors and assigns.

1.33 "Zoning Ordinance" shall mean and refer to City of College Station zoning ordinances, governmental regulations, and all amendments thereto.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.01 Existing Property. The residential Lots which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Second Supplemental Declaration within the Gardens of

Castlegate are more particularly described on the plat recorded at Volume 5002, Pages 152-153, in the Official Records of Brazos County, Texas.

2.02 Additions to Existing Property. Additional land(s) may become subject to this Second Supplemental Declaration, or the general scheme envisioned by this Second Supplemental Declaration, as follows:

(a) The Declarant may (without the joinder and consent of any person or entity) add or annex real property additions to the scheme of this Second Supplemental Declaration by filing of record an appropriate enabling declaration, generally similar to this Second Supplemental Declaration, which may extend the scheme of the Covenants to such property. Provided further however, such other declaration (s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Second Supplemental Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional Assessable Property and/or Common Property to the scheme of this Second Supplemental Declaration, such annexation proposal must have the express approval of the Board.

Any additions made pursuant to this Section 2.02, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the covenants of the enabling declaration. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law or by lawful articles or agreement of merger, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law or by lawful articles or agreement of merger, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Second Supplemental Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 Membership. Each and every Owner of each and every Lot which is subjected to these Covenants shall automatically be, and must at all times remain, a Member of the Association in good standing. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. During the Development Period, the Association shall have two (2) classes of Members: Class A and Class B. The Class A Members shall include: (a) all Owners (other than the Declarant during the Development Period); and (b) all Residents (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association. The Class B Member shall be the Declarant.

3.02 Voting Rights. The two (2) classes of voting Members shall have the following voting rights during the Development Period:

Class A: The Owner (s) of each Lot (other than Declarant) shall be entitled to no votes.

Class B: The Class B Member shall have one (1) vote for each Lot it owns.

After the Development Period, there shall be one class of voting Members as follows: The Owner (s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owner (s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Any Owner, Resident or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of these Covenants, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Annual Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board.

The Board may make such rules and regulations, consistent with the terms of this Second Supplemental Declaration and the Bylaws, as it deems advisable, for: any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

3.03 Board of Directors. During the Development Period, the affairs of the Association shall be managed initially by a board of three (3) individuals elected by the Class B Member. However, after the Development Period, the Board shall consist of at least three (3) individual Directors elected by the Members.

The Directors need not be Members of the Association. Directors shall be elected for two year terms of office and shall serve until their respective successors are elected and qualified. After the Development Period, any vacancy which occurs in the board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

3.04 Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law.

ARTICLE 4

RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

4.01 Easement. Subject to the provisions of Sections 4.02 through 4.07, each and every Owner in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot, provided the conveyance and transfer is accomplished in accordance with this Second Supplemental Declaration. All Residents in good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

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

(a) The right of the Declarant or Association to prescribe reasonable regulations (e.g. speed limits on the streets and limitations on parking on or in the streets) and policies governing, and to charge

reasonable expense reimbursements and/or deposits (e.g., key, access card and/or radio transmitter device deposits) related to, the use, operation and maintenance of the Common Properties;

(b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Property or Common Properties or by the Association to improve or maintain the Common Properties;

(c) The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Second Supplemental Declaration;

(d) The right of the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Declarant or the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operation for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(f) The right of the Declarant or the Association in accordance with the requirements of the Texas Property Code to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which non-compliance with this Second Supplemental Declaration exists, and otherwise for any period deemed reasonable by the Association for any infraction of the then-existing rules and regulations and/or architectural guidelines;

(g) The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board; and

(h) The right of the Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of Castlegate Subdivision, Section 8 and the Castlegate Development.

4.03 Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

4.04 Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

4.05 Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

4.06 Use of Common Properties. The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, and the supervision by attending adults of children. No person or entity (excluding the Declarant) shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political or propaganda matters;
- (b) distribute handbills, newsletters, flyers, circulars or other printed materials,

without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion). The Association may, on its own motion, permit and allow reasonable activities to occur on the Common Properties in accordance with rules and regulations deemed reasonable and appropriate by the Association.

4.07 User Fees and Charges. The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners or Residents. Examples (by way of illustration, and not limitation) of these special charges and fees would include: extraordinary utility consumption; additional gate and/or security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. In establishing special user fees, the Board may formulate reasonable classifications of users. Such fees should be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

4.08 Encroachments. If: (a) construction, reconstruction or repair activities which have been approved by the ARC; or (b) shifting, settlement or other movements of any portion of ARC approved Improvements, results either in the Common Properties encroaching on a Lot or Dwelling Unit or in a Lot or Dwelling Unit encroaching on the Common Properties or on another Lot or Dwelling Unit, and unless otherwise directed by the ARC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

4.09 Private Streets. The entry gatehouse, streets, sidewalks and alley network within Castlegate Subdivision, Section 8 are "private" and constitute a portion of the Common Properties which are subject to the jurisdiction and administration by the Association. In addition to the other provisions appearing within this Article, the Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the entry gatehouse, sidewalks, streets and alleys covering items such as (but not necessarily limited to):

- (a) identification and entry programs for Owners, Residents and Members, their respective immediate families, their guests and vehicles owned or driven by any of them;
- (b) speed limits, designated parking areas, restricted parking areas and no-parking areas;
- (c) signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- (d) a "fines" system through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations; and

(e) disclaimers of liability for any and all matters or occurrences on or related to the Common Properties.

(f) Upon satisfaction and compliance with the requirements of Section 11.01, each Owner shall be entitled to receive a gate access code from the Association at no cost. Automatic remote transmitters to open the gates are available for purchase from the Association at a reasonable price to be determined by the Association. Additional or replacement transmitters for lost or inoperable transmitters, may be purchased by an Owner at a reasonable price to be determined by the Association. In the event of sale of a Lot by an Owner, the selling Owner shall notify the Association to deactivate the transmitters at the time of sale. Transmitters may be transferred to new Owners. New Owners shall contact the Association to program the new Owner's transmitter.

ARTICLE 5

COVENANTS FOR ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each subsequent Owner of any Lot, 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 (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) regular Annual Assessments;
- (b) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;
- (c) special individual assessments levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as (but no limited to): maintenance and repairs to portions of the Property caused by the wilful or negligent acts of the individual Owner, Member or Resident; the remedy, cure or minimizing of problems cause by, or as a result of, violations of these Covenants by an Owner, Member or Resident; and
- (d) individual assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common Properties.

The regular, special group, special individual and individual assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then-existing Owner, Member and Resident of such Lot at the time when the assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident associated with the Dwelling Unit (s) on such Owner's Lot.

5.02 Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Property and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of private streets, gatehouse, floodway easement areas, walkways, common green, ponds,

lakes, recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in Articles 4 and 6 herein; carrying out the other various matters set forth or envisioned herein or in any Amended Second Supplemental Declaration related hereto; and for any matter or thing designated by the City of College Station in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

5.03 Base and Amount of Annual Assessments. Until and unless otherwise determined by the Board of Directors of the Association, the initial regular base assessment shall be One Thousand Three Hundred Fifty Dollars (\$1,350.00) per Lot per year for the maintenance of the private streets, other Common Properties and Lot lawn maintenance as provided in Section 9.09. The Association's Board of Directors may fix and modify from time to time, the actual regular base assessment.

Notwithstanding any provision herein to the contrary, any and all Lots owned by the Declarant during the Development Period shall be exempt from the payment of any and all assessments of any kind or character. For Lots owned by Owners other than Declarant which do not have a residence fully constructed the Owner shall pay the initial base assessment of \$500.00 per year (subject to modification by the Board) until the sodding is installed at a residence. After sodding is installed, the assessments for the remainder of the year shall be increased to the full assessment rate.

5.04 Special Group Assessments. In addition to the regular Annual Assessment authorized by Section 5.03 hereof, the Association may levy in any Fiscal Year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose (s) (including without limitation those matters arising out of litigation and/or judgments); provided that any such assessment shall have the affirmative approval of at least two-thirds of the Individuals comprising the Board.

5.05 Rate of Assessments. Both regular and special group assessments must be fixed at a uniform rate for all residential Lots owned by Class A Members, unless otherwise approved by at least two-thirds of the individuals comprising the Board. Monthly assessments will commence upon the earlier of one hundred twenty (120) days after an Owner purchases a Lot or installation of the grass on the front and side yards of the Lot.

5.06 Date of Commencement of Assessments; Due Dates. The Annual Assessment shall be due and payable in one (1) installment on or before March 1 of each year, and shall, if not paid within ten (10) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may further prescribe: (a) procedures for collecting advance regular Annual Assessments from new Owners, Members or Residents out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a recent history of being untimely in the payment(s) of assessments.

5.07 Duties of the Board of Directors with Respect to Assessments.

(a) In the event of a revision to the amount or rate of the Annual Assessment, or establishment of a special group assessment, the Board shall fix the amount of the assessment against each Lot, and the applicable due date(s) for each assessment, at least sixty (60) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association;

(b) Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by the Board as being reasonable and economical; and

(c) The Board shall, upon reasonable demand, furnish to any Owner originally liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

5.08 Effect of Non-Payment of Assessment: the Personal Obligation of the Owner: the Lien: and Remedies of Association.

(a) Effective as of, and from and after the filing and recordation of this Second Supplemental Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member/Resident which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then existing Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner;

(b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment, charge or fine, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, a reasonable supply of self-addressed postage prepaid envelopes, and a written request to receive such notification;

(c) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account. The unpaid amount of any such delinquent assessment, charge, or fine shall bear interest from and after the date when due at the highest lawful rate of interest per annum until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association;

(d) The Association may, at its discretion be subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of Brazos County, Texas which specifically identifies the unpaid assessments, charges or fines; and (ii) publish and post, within one or more locations within the Property, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;

(e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment of performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstances the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest of if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

5.09 Power of Sale.

(a) The lien described within the preceding Section is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within Castlegate Subdivision, Section 8, has granted, sold and conveyed and by these covenants does grant, sell and convey unto the Trustee, such Owner's Lot. To have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

(b) This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the Beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, Beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code), and in the event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended and otherwise complying with that statute, then Trustee shall sell the Lot, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Lot as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the Purchaser or Purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to Beneficiary the full amount of principal, interest, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

(c) It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, its substitute or successor to sell the Lot in accordance with the provisions of this section. Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the Lot, and to have the amount for which such Lot is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of the Lot, or any portion thereof, under the terms of this Section, the Owner, his heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at sufferance of such Purchaser, and in the event of his failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated. The foreclosure of the continuing contract lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure.

(d) Notwithstanding anything to the contrary contained in this Article 5, the Association's foreclosure of the Payment and Performance Lien shall be subject to the requirements of applicable law, including without limitation, Chapter 209, Texas Property Code, as amended or replaced from time to time. The terms and provisions of this paragraph shall control and supercede any contrary provisions in this Second Supplemental Declaration.

5.10 Subordination of the Lien to Mortgages. The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) bona-fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;

(b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and

(c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

5.11 Exempt Property. The following property otherwise subject to this Second Supplemental Declaration shall be exempted from any assessments, charges and liens created herein:

- (a) All property dedicated to and accepted by a local public or governmental authority;
- (b) Common Properties; and
- (c) Exempt Property.

ARTICLE 6

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

6.01 Powers and Duties. The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Property and the Owners and the Members and Residents, may provide and may pay for, out of the assessment fund(s) provided for in Article 5 above, one or more of the following:

- (a) Care, preservation and maintenance of the Common Properties (including without limitation the proper maintenance of the private streets) and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;

- (b) Maintenance, care and preservation of the landscaping on the Lots;
 - (c) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;
 - (d) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Property traditionally provided by local governmental agencies;
 - (e) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;
 - (f) The services of any person or firm (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees. The Board is specifically authorized to engage personnel and equipment (such as computers, software and electronic communication and transmission devices) for the administration of the Association and the collection of assessments described in Article 5;
 - (g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Second Supplemental Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Second Supplemental Declaration.
- The Board shall have the following additional rights, powers and duties:
- (h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;
 - (i) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the Individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned by Article 5; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Lot;
 - (j) To borrow funds (including, without limitation, the borrowing of funds from the Declarant and/or its affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association
 - (k) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
 - (l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(m) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time;

(n) To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;

(o) Pursuant to Article 7 herein, to adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

(p) To enforce the provisions of this Second Supplemental Declaration and any rules made hereunder and, subject to the requirements of applicable law, including without limitation, Chapter 209, Texas Property Code as amended and replaced from time to time, to enjoin and seek damages from any Owner, Resident or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted Individual Lot Owner assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (i) borrow monies from the Declarant; (ii) lease equipment from the Declarant; (iii) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties; and, as to professional management contracts, terminable by the Association at any time for an reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

6.02 Board Powers. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Article 12, Section 12.01, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

6.03 Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner, Member or Resident (including, without limitation, the Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

6.04 Liability Limitations. Neither any Resident nor the directors and officers and managers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Resident, whether such other Resident was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person,

firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

6.05 Reserve Funds. The Board may establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

ARTICLE 7

INSURANCE; REPAIR; RESTORATION; COMMUNITY SERVICES ARRANGEMENTS

7.01 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the mortgagees or insurers. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;
- (b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, Owners, Residents and Members with respect to the Common Properties;
- (c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and
- (d) Liability insurance regarding the errors and omissions of directors, officers, managers, employees and representatives of the Association.

7.02 Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

7.03 Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Article 5 of this Second Supplemental Declaration to cover the deficiency.

7.04 Community Service Arrangements. Declarant and the Association have arranged for the employment and utilization of a mechanical crossing gate and pedestrian access gate with coded

entry at the entry point to the Property. The Declarant and the Association hope that the gate and private streets concept will discourage undesired and unauthorized vehicular traffic within the Property and foster a higher degree of peace and tranquility. The gate program is not designed to restrict or impede pedestrian traffic into, within or out of the Property.

Although the Declarant and the Association reasonably believe that the existence and visibility of community services personnel and/or controlled access points may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Property nevertheless neither the Declarant nor the Association warrant or guarantee that: (a) the community services personnel and/or gate arrangements are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property; and (b) such acts will not be attempted or actually occur within the Property. These community services arrangements are not designed or intended to replace the conventional police and fire protection and paramedical services available from the City of College Station.

The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, members or authorized representatives of the Association. The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners, Residents and Members (and their respective family members and guests).

Each Owner, Resident and Member expressly understands, covenants and agrees with the Declarant and the Association that:

(a) Neither Declarant nor the Association has any responsibility or liability of any kind whatsoever regarding or pertaining to the real and personal property of each Owner, Resident and Member;

(b) Each Owner, Resident and Member shall, from time to time, consult with reputable insurance industry representatives of each Owner's, Resident's and Member's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount and kind of insurance deemed satisfactory to each Owner, Resident and Member covering his or her real and personal property;

(c) Each Owner, Resident and Member releases and holds Declarant and the Association harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the community services system and private streets within the Property, including, without limitation:

- (i) the interviewing, hiring, training, licensing (if any), bonding (if any) and employment of community services personnel;
- (ii) the instructions, directions and guidelines issued to or by the community services personnel;
- (iii) the duties, performance, actions, inactions or omission of or by the community services personnel; and
- (iv) the functioning (whether mis-, mal-, or non-) of the mechanical gate access devices.

(d) Each Owner, Resident and Member will cooperate with Declarant, the Association and the ARC in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Property and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any private streets and other Common Properties within the Property.

ARTICLE 8 GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

8.01 Construction of Improvements. No Improvements or Structures shall hereafter be constructed upon any of the Property without the prior approval of the ARC.

8.02 Antennas.

(a) Antennas may be installed and maintained in an Approved Location unless installation in the Approved Location results in Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment. If installation in an Approved Location results in Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment, the Antenna may be installed and maintained elsewhere on the Lot and the Architectural Committee may require screening that does not result in Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment.

(b) Within five (5) days after installation of an Antenna, Owner shall notify the Association in writing that an Antenna has been installed. If Owner has not installed the Antenna in an Approved Location and the Association can demonstrate that no Unreasonable Delay, Unreasonable Cost Increase or Signal Impairment would have resulted from installation of the Antenna in an Approved Location, the Association may require the Owner, at Owner's cost, to move the Antenna to an Approved Location. If the Antenna could have been located in Approved Location without Unreasonable Delay or Signal Impairment but with Unreasonable Cost Increase, the Association may, at its expense, using an installer selected by the Association and after reasonable notice to Owner, move the Antenna to an Approved Location.

(c) For purposes of this Section 3.02, the following are defined terms:

"Antenna" means any exterior antenna, aerials, satellite dishes or other apparatus (a) of one meter or less in diameter that is used to receive direct broadcast satellite service or to receive or transmit fixed wireless signals via satellite; (b) of one meter or less in diameter that is used to receive video programming services via multipoint distribution services or to receive or transmit fixed wireless signals via other than satellite; or (c) that is used to receive television broadcast signals.

"Approved Location" means that portion of a Lot which is not visible from any street, Common Area or other Lot and preferably: (a) in the rear or side yard of the Lot; (b) mounted on a pole, the dwelling unit or other structure below the fence line or otherwise screened by a fence; and (c) not located on the roof of the dwelling unit or other improvement. See (B) above for other criteria requiring location in an Approved Location.

"Signal Impairment" means that the ability of an Antenna to receive or transmit acceptable quality signals from an Approved Location is precluded.

"Unreasonable Cost Increase" means the costs of installation, maintenance or use of an Antenna are unreasonably increased in light of the cost of the antenna and related equipment.

"Unreasonable Delay" means the installation, maintenance and use of the apparatus in the Approved Location is unreasonably delayed, such as by a preapproval or permit requirement.

8.03 Insurance Rates. Nothing shall be done or kept on a Lot which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the improvements located thereon without the prior written approval of the Board.

8.04 Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ARC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the ARC.

8.05 Signs. No sign of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Committee except the following permitted signs:

- (1) signs advertising the Lot for sale;
- (2) not more than two (2) political signs;
- (3) school spirit signs; or
- (4) security signs.

No permitted sign shall exceed five (5) square feet without the prior written approval of the Architectural Committee. Declarant or the Architectural Committee shall have the right to enter and remove any unapproved sign, advertisement, billboard or structure which is placed on any Lot without the Declarant or the Architectural Committee's consent, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

8.06 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

8.07 Noise. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Property or to its occupants.

8.08 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Review Committee.

8.09 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any improvement of any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

8.10 Repair of Improvements. All improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

8.11 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any improvement which in any way alters the exterior appearance of said improvement shall be performed only with the prior written approval of the ARC.

8.12 Roofing Materials. The surface of all roofs of principal and secondary structures shall be quality composition shingle using the product known as Elk Ebony, or, in the event of the discontinuance of such product or the availability of comparable products, such other materials as the ARC in its sole and absolute discretion might approve. The ARC shall have authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

8.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the ARC and approval of such design, including the aesthetics thereof, shall be required before construction may begin.

8.14 Driveway. The ARC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property. In all cases, driveways shall be composed of at least 25% brick pavers.

8.15 Tanks. The ARC shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or LPG and including swimming pool filter and hot tub tanks. All tanks shall be screened so as not to be visible from any other portion of the Property.

8.16 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices, for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on improvements as approved in writing by the ARC, except what has already been constructed by the City of College Station, prior to August, 2000; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of improvements which have been previously approved in writing by the ARC. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the ARC.

8.17 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the ARC.

8.18 Hazardous Activities. No activities shall be conducted on the Property and no improvements shall be constructed on a Lot that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

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

8.20 Machinery and Equipment. Without the approval of the Association or Declarant, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by a public utility, in the performance of its legitimate functions.

8.21 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon a Lot without the prior written approval of the ARC; provided however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures.

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

8.23 Mobile Homes, Travel Trailers, Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time. No travel trailers or recreational vehicles may be kept on any Lot unless enclosed in a garage.

8.24 Fences.

(a) Except as otherwise provided herein or approved by the ARC in writing, all fences on a Lot within the Subdivision shall be wrought iron. Stone columns shall be required on the front corners of each Lot which are visible from the front of the house on such Lot, with stone of the same standard and type required by Section 9.05.

(b) Within the area of the Lot bounded by the front wall line of a dwelling unit and the side boundary lines of a Lot, commencing 24 feet from the rear boundary corners, and continuing forward to the front boundary corners, the Owner may erect and maintain a fence constructed of 1" by 6" cedar privacy fence materials, six feet (6') in height, with the finished (smooth) side facing all streets or common areas or adjoining properties, and the rough side facing the interior of the Lot.

(c) The Owner of the Lot shall be responsible for maintenance and repair of all fences once erected.

(d) No fence, wall, or hedge shall be built or maintained forward of the front wall line of the Dwelling Unit, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained within the front building setback line of any Lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24")

above the ground. Notwithstanding the foregoing, the ARC is empowered to waive the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood.

8.25 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the ARC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than a total of four (4) adult dogs or cats, or a combination thereof, may be kept on a single lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.

8.26 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design. All landscaping designs shall install live, growing sod covering the front, side and backyards, within thirty (30) days of occupancy of any residence constructed on a Lot, and shall maintain it in a healthy and growing condition. All front, side and back yards must be irrigated with automatic sprinkler systems, and have landscaping acceptable to the ARC. At all times after improvements are constructed on any Lot, the Owner of such Lot shall keep and maintain at least one living crepe myrtle (tree form) with diameters of two inches in the front yard of the Lot.

8.27 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Second Supplemental Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Second Supplemental Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence improvements, and then the material shall be placed within the property lines of the Lot upon which the improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the ARC, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

8.28 Mailboxes. Mailboxes shall be brick or other materials approved by the ARC, and shall be located on individual Lots.

8.29 Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located forty (40') feet from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the ARC. Measurement shall be by chord, not by arc. No tree shall be permitted to remain within such areas, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

8.30 Garage Conversions. No garage, or any portion thereof, may be converted into enclosed living space unless an alternative garage of at least equal size is constructed and the plans and specifications for the conversion and construction are first approved in writing by the ARC.

8.31 Lakes and other public areas. On any lakes or other public areas constructed on the Property, the Board may establish rules and regulations for use or prohibitions against use from time to time. Swimming, boating and fishing shall not be allowed, except by and in accordance with regulations established by the Board in its sole and absolute discretion.

8.32 Compliance with Provisions of this Second Supplemental Declaration. Each Owner shall comply strictly with the provisions of this Second Supplemental Declaration as the same may be amended from time to time. Failure to comply with any of the covenants shall constitute a violation of this Second Supplemental Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

8.33 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article 8 or elsewhere in this Second Supplemental Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE 9 RESIDENTIAL RESTRICTIONS

9.01 Residential Use: Unrelated Occupants. All Lots shall be improved and used solely for residential purposes, inclusive of a garage, fencing and such other improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family and guests. All Lots within the Property shall be used and improved solely for single-family residential purposes, with no more than one (1) residential Dwelling Unit per Lot. Anything herein to the contrary notwithstanding, any Lot may be used or improved for greenbelt, open space and/or drainfield purposes. No improvement may be constructed upon any Lot within ten feet (10') of an improvement constructed on a neighboring Lot or that would unreasonably obstruct the view from other portions of the Property, and the positioning of all improvements upon Lots within the Property is hereby expressly made subject to ARC review. The ARC may, but shall not be required to, prevent or allow the construction of a proposed improvement based upon the effect it will have upon the view from any particular Lot. The ARC may consider the effect the improvement will have on the Property as a whole, it being expressly understood that neither the ARC

nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots. All Residents of any Dwelling Unit on a Lot except for one (1) shall be related within the second degree of consanguinity or affinity.

9.02 Garages. No Lot shall have improvements erected which do not provide for a minimum of a two vehicle garage. All garage doors must be stained cedar, stain on garage doors must be maintained regularly to keep a uniform appearance within the Gardens at Castlegate, in the discretion of the ARC.

9.03 Outbuildings. There shall be not constructed any outbuildings on a Lot, including without limitation detached garages, storage buildings or greenhouses, without the prior written approval by the ARC.

9.04 Building Height. No improvement greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the ARC. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed improvement to the ridge line of the roof of the proposed improvement.

9.05 Building Materials: Dwelling Size. All dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed of at least ninety percent (90%) masonry or other material specifically approved in writing by the ARC. Masonry includes ceramic tile, brick, rock and all other materials commonly referred to in the Brazos County, Texas area as masonry. All stone used shall be the product known as "H2O Cream & White" produced by Billy Cooper Stone Company, Inc. All brick used shall be the color and product known as "Cromwell" manufactured by CBC Commercial Brick Company. The ARC in its sole discretion may (but need not) approve other comparable products. Unless an exception is granted by the ARC, all dwellings shall contain not less than one thousand eight hundred (1,800) square feet of heated enclosed living space, exclusive of porches (open or covered), decks, garages and carports. Chimneys shall be 100% masonry.

9.06 Construction in Place. The use of prefabricated materials, including antique homes moved from other locations, will be allowed only with the prior written approval of the ARC.

9.07 Set-back Requirements. A building ("subject building") on a Lot may be erected on or at any distance from a side lot line, provided the following formula is met: the distance that the foundation of a subject building lies from a side lot line plus the distance that the foundation of a building constructed on an adjacent lot lies from such lot line equals at least ten feet (10'). For example, if the foundation of a building constructed on Lot 10 lies two feet (2') from the side lot line between Lots 10 and 11, then no part of the foundation of a building constructed on Lot 11 may be nearer than eight feet (8') from the side lot line between Lots 10 and 11.

9.08 Landscaping: Maintenance. Construction of each and every residential Dwelling Unit on a Lot shall include the installation and placement of appropriate landscaping. Subject to the maintenance provided by the Association as described in Section 9.09, each Owner, Member and Resident of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep and maintain the Lot, and all improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation):

- (a) the proper seeding, consistent watering and mowing of the Lot;
- (b) the pruning and cutting of all trees and shrubbery on the Lot;

- (c) prompt removal of all litter, trash, refuse and waste;
- (d) watering of all landscape;
- (e) keeping exterior lighting and mechanical facilities in working order;
- (f) keeping lawn and garden areas alive, free of weeds and attractive;
- (g) keeping driveways in good repair and condition;
- (h) promptly repairing any exterior damage; complying with all governmental health and police requirements;

all in a manner and with such frequency as is consistent with aesthetics, safety and good property management. The Association and its agents, during normal business hours, shall have the right (after 5 days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected subject to the requirements of Chapter 209, Texas Property Code. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

9.09 Yard Maintenance: Sprinkler System. The Association will have primary responsibility for maintenance (generally limited to mowing, trimming and edging only and other maintenance activities that the Association may decide to perform from time to time) of the following portions of each Lot yard: the front yard area between the front boundary line of a Lot and the front line of the Dwelling Unit on such Lot and that part of the side yard area visible from the street and lying between the side boundary line of the Lot and the side line of the Dwelling Unit, but excluding patios, courtyards and fenced areas. As of the date of this Second Supplemental Declaration, the maintenance provided by the Association generally includes: lawn cutting, edging and trimming, fertilization of lawn, flowerbeds, trees and shrubs, lawn and flowerbed weed control, shearing of shrubs, tree pruning, ant control, flowerbed mulching, leaf pick up and monitoring of automatic irrigation systems. The Association may from time to time, in its sole and absolute discretion, alter or discontinue the types of maintenance services it provides; provided, however, the Association will not discontinue the mowing, trimming and edging of the front and side yard areas described above.

The Association is not responsible for: sprinkler system maintenance; providing water; planting and/or re-planting; grass loss; seasonal color and/or decorations; and the maintenance of exotic or poorly-suited landscape plants. Each Owner is encouraged to consult with authorized representatives of the Association or the ARC for further information if in doubt concerning the grounds maintenance program.

Construction of each and every residential Dwelling Unit within the Property shall include the installation and placement of appropriate landscaping. Each Lot on which a Dwelling Unit is constructed

shall have and contain an underground water sprinkler system for the purpose of providing sufficient water (to preserve and maintain the landscaping in a healthy and attractive condition) to the front, back, and side yard areas situated outside of fences, walls or hedges. The Association shall have the right to operate each sprinkler, or require the Lot Owner to do so, in conjunction with a common maintenance plan although the respective Lot Owner shall bear all costs and expenses related to the installation of the sprinkler system as well as the water consumption arising from its operation. The Association will bear the reasonable cost of repairs to the sprinkler system if caused by the negligence of employees, agents or officers of the Association. In the event that a Lot Owner shall select and implement an exterior landscaping plan or yard composition which, in the reasonable opinion of the ARC or the Association, requires unusual or extraordinary cost or expense in upkeep and maintenance, such Lot Owner shall reimburse the Association on a monthly basis for the additional costs or expenses so incurred. Notwithstanding the efforts which may be made by the Association to maintain exterior landscaping, each Lot Owner shall use reasonable efforts to keep, preserve and maintain the landscaping in a healthy and attractive condition.

ARTICLE 10 EASEMENTS

10.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Second Supplemental Declaration, are incorporated herein by reference and made a part of this Second Supplemental Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, Common Properties, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of seven and one-half (7-1/2) feet on each side of such Lot line.

10.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The Easement Area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

10.03 Surface Areas. The surface of Easement Areas for underground utility services may be used for planting of shrubbery, trees lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any Easement Area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such Easement Area.

10.04 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of improvements approved by the ARC thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Second Supplemental Declaration and shown on the recorded plat of the Property. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the ARC.

10.05 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Properties for the purpose of enforcing the Covenants in accordance with Section 12.05 hereof, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Properties to effectuate the foregoing purposes shall not be deemed as trespass.

ARTICLE 11 REGISTRATION

11.01 Registration with the Association. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Resident and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as:

- (a) the full name and address of each Owner, Member and Resident;
- (b) the full name of each individual family member who resides within the residential dwelling of the Lot Owner;
- (c) the business address, occupation and telephone numbers of each Resident;
- (d) the description and license plate number of each automobile owned or used by a Resident and brought within the Property;
- (e) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency; and
- (f) such other information as may be reasonably requested from time to time by the Association.

In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

ARTICLE 12 GENERAL PROVISIONS

12.01 Power of Attorney. Each and every Owner, Member and Resident hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest

and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following:

(a) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Second Supplemental Declaration and the Property;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Second Supplemental Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Property, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Second Supplemental Declaration in the Brazos County Clerk's Office and shall remain in full force and effect thereafter until conclusion of the Development Period.

12.02 Further Development. During the Development Period, each and every Owner, Resident and Member waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the following: to contest, object, challenge, dispute, obstruct, hinder or in any manner disagree with the proposed or actual development (including, without limitation, zoning or rezoning efforts or processes) pertaining to residential uses of any real property owned by the Declarant or by the affiliates, assignees or successors of the Declarant within a one-half mile radius of the Subdivision.

12.03 Duration. The Covenants of this Second Supplemental Declaration shall run with and bind the land subject to this Second Supplemental Declaration, and shall inure to the benefit of and be enforceable by the Association and/or Owner and Resident of any land subject to this Second Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of this Second Supplemental Declaration, after which time these Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51%) of all Lots within this Subdivision and all the Subdivisions and recorded in the Official Records of Brazos County, Texas, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement [where approved by less than seventy-five percent (75%) of the Owners of all Lots within this Subdivision to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

12.04 Amendments.

(a) **By Declarant.** During the Development Period, this Second Supplemental Declaration may be amended by the Declarant, acting alone. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant, setting forth the amendment, and acknowledged by the Secretary of the Association certifying that the Development Period has not terminated.

(b) By Owners. After the Development Period, this Second Supplemental Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 3.02 hereof.

12.05 Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the "good standing" qualifications of the Residents and Members of such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of College Station, Texas is specifically authorized (but not obligated) to enforce these Covenants. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

12.06 Validity. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidity of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of College Station (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control.

12.07 Proposals of Declarant. The proposals of the Declarant, as set forth in various provisions hereinabove, are mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any person or entity can or should rely. Nothing contained in or inferable from this Second Supplemental Declaration shall ever be deemed to impose upon any other land owned or to be owned by the Declarant, or any related entity, any covenants, restrictions, easements or liens or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any person or entity other than the Declarant. Declarant makes no representations of any kind or character concerning any land parcels adjoining the Property. Each prospective Owner should make his/her own investigation concerning those parcels and what impact, if any, same may have on the ownership, use and enjoyment of the Property.

12.08 Service Mark. Declarant is exclusive licensee of a service mark for Castlegate (referred to as the "Service Mark") in the Brazos County, Texas area. Unless and until a written license agreement has been sought and obtained from Declarant (and in this connection Declarant may withhold consent in its sole and absolute discretion), no person or entity may at any and/or for any reason whatsoever use, depict, draw, demonstrate, reproduce, infringe, copy or resemble, directly or indirectly, the Service Mark.

12.09 Headings. The headings contained in this Second Supplemental Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Second Supplemental Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

12.10 Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member or Owner under the provisions of this Second Supplemental Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such person within the Property; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

12.11 Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Second Supplemental Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

12.12 Disputes. Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions (excluding architectural matters) of this Second Supplemental Declaration or the Association Bylaws, shall be determined by the Board of Directors. Matters pertaining to architectural matters shall be determined by the Architectural Review Committee. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

12.13 Enforcement and Nonwaiver.

(a) **Right of Enforcement.** Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of this Second Supplemental Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(b) **Nonwaiver.** The failure to enforce any provision of this Second Supplemental 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.

(c) **Liens.** The Association shall have the right, when appropriate in its judgment and subject to Chapter 209, Texas Property Code, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Second Supplemental Declaration.

12.14 Assignment by Declarant. Notwithstanding any provision in this Second Supplemental Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Second Supplemental Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

12.15 Exemption of Declarant. Notwithstanding any provision in this Second Supplemental Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Review Committee. Without in any way limiting the generality of the preceding sentence, this Second Supplemental Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices, and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property.

12.16 Interpretation. The provisions of this Second Supplemental Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the property and of promoting and effectuating the fundamental concepts of the Property set forth in this Second Supplemental Declaration.

12.17 Construction.

(a) Restrictions Severable. The provisions of Second Supplemental 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.

(b) 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.

(c) Captions. All captions and titles used in this Second Supplemental 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.

(d) Deadlines on Business Day. If any deadline in this Second Supplemental Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.

(e) Choice of Law. This Second Supplemental Declaration shall be construed and enforced in accordance with the laws of the State of Texas.

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

GREENS PRAIRIE INVESTORS, LTD.

By: Greens Prairie Associates, LLC,
its general partner

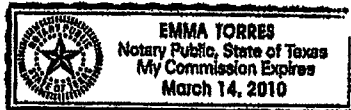
By: Vicki Hillert
Vicki Hillert, Vice President

THE STATE OF TEXAS
COUNTY OF BRAZOS

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§

(ACKNOWLEDGMENT)

This instrument was acknowledged before me on the 29th day of August, 2007, by Vicki Hillert, Vice President of Greens Prairie Associates, LLC, the general partner of Greens Prairie Investors, LTD., a Texas limited partnership, on behalf of said partnership.



Emma Torres
Notary Public, State of Texas

The Secretary of the Association hereby certifies that the Development Period has not terminated

The Gardens of Castlegate Owners Association, Inc.

By:

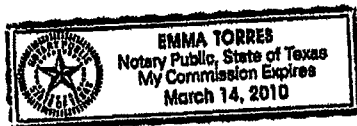
Dawn Phillips
Dawn Phillips, Secretary/Treasurer

THE STATE OF TEXAS
COUNTY OF BRAZOS

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§

(ACKNOWLEDGMENT)

This instrument was acknowledged before me on the 29th day of August, 2007, by Dawn Phillips, Secretary/Treasurer of The Gardens of Castlegate Owners Association, Inc., on behalf of said corporation.



Emma Torres
Notary Public, State of Texas

CONSENT AND SUBORDINATION BY LIENHOLDER

The First National Bank of Bryan, a Franklin Family Community Bank, is the owner of a lien against certain portions of the Property, and by its execution hereof, hereby consents to the Second Supplemental Declaration and subordinates its lien to the restrictions of the Second Supplemental Declaration hereinabove amended and restated and agrees that a deed in lieu of foreclosure or a foreclosure of its lien will not terminate or otherwise affect the Second Supplemental Declaration.

DATED this 5th day of September, 2007

THE FIRST NATIONAL BANK OF BRYAN, A FRANKLIN
FAMILY COMMUNITY BANK

By:

Nora Thompson
Name: Nora Thompson
Title: Vice President

THE STATE OF TEXAS

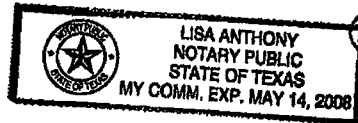
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(ACKNOWLEDGMENT)

COUNTY OF BRAZOS

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This instrument was acknowledged before me on the 5th day of September, 2007, by Nora Thompson, Sr. Vice President of The First National Bank of Bryan, a Franklin Family Community Bank, on behalf of said banking institution.



Lisa Anthony
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Cully Lipsey
Hoelscher, Lipsey, Elmore & Benn, P.C.
1021 University Drive East
College Station, Texas 77840

SECOND AMENDED AND RESTATED SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTION

Doc Bk Vol Pg
00975903 BR E232 261

Filed for Record in:
BRAZOS COUNTY

On: Sep 07, 2007 at 04:38P

As a
Recording

Document Number: 00975903

Amount 171.00

Receipt Number - 324796

By:
Seth Gallion

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

BRAZOS COUNTY

as stamped hereon by me.

Sep 07, 2007

HONORABLE KAREN MCQUEEN, COUNTY CLERK
BRAZOS COUNTY