

**Declaration and Master Deed**

**Stonegate Subdivision**

**DOCH 98027239**

Stonegate Joint Venture, called declarant, is the owner in fee simple of certain real property located in El Paso County, Texas and known by official plat designation as Vista Del Sol Unit 136 an addition to the City of El Paso, County of El Paso, State of Texas as contained in the plat records of the City and County of El Paso, State of Texas.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting such subdivision, declarant declares that all of the real property described above and each part of it will be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which will constitute covenants running with the land and will be binding on all parties having any right, title, or interest in the above described property or any part of it, their heirs, successors, and assigns, and will inure to the benefit of each owner of such right, title, or interest. This document supplements and is an addition to the protective covenants for Vista Del Sol Unit 136 to the City of El Paso, Texas recorded in Volume 3106, Page 322 on file in the County Clerk's Office of El Paso County, Texas. To the extent of any conflict between this Declaration and Master Deed and said Protective Covenants, the Protective Covenants shall control.

**I.**

"Association" means and refers to Stonegate Homeowner's Association, Inc., its successors and assigns.

"Common area" means all real property owned by the association for the common use and enjoyment of the owners or the landscaped areas and medians within the subdivision which are to be

maintained by the association. The common area to be owned by the association at the time of conveyance of the first lot is described as follows: As shown on Exhibit "A" attached hereto.

"Declarant" means Stonegate Joint Venture and its heirs, successors, and assigns provided such successors or assigns acquire more than one undeveloped lot from declarant for the purpose of development.

"Deed of trust" means a deed of trust or a conventional mortgage.

"Lot" means any plot of land shown on the recorded subdivision plat referred to above with the exception of the common area .

"Maintenance" means the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping further means the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

"Member" means every person or entity who holds membership in the association.

"Holder" means a beneficiary under or holder of a deed of trust or a mortgagee under or holder of a conventional mortgage.

"Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, and includes contract sellers, but does not include those holding title merely as security for performance of an obligation.

"Subdivision" means the subdivided real property above described and such additions to that property as may be brought within the jurisdiction of the association as provided in this declaration.

## II.

Every owner of a lot will be a member of the association; membership will be appurtenant to and may not be separated from ownership of a lot.

The association will have two classes of voting members a follows:

Class A members will be all owners with the exception of declarant, and will be entitled to one vote for each lot owned. When more than one person holds an interest in a given lot, all such persons will be members and the vote for such lot will be exercised as they may determine among themselves. In no event may more than one vote be cast with respect to any lot owned by Class A members.

The Class B member will be declarant, who will be entitled to exercise three votes for each lot owned. The Class B membership will cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

## III.

Declarant covenants for each lot within the subdivision, and each owner of a lot is deemed to covenant by acceptance of his or her deed for such lot, whether or not it is so expressed in the deed, to pay to the association (1) annual assessments and (2) special assessments for capital improvements, maintenance, repairs and/or upkeep of, certain designated areas contained in the subdivision. Such assessments will be established and collected as provided in this declaration. The annual and special assessments, together with interest, costs, and reasonable attorney fees, will be a charge on the land and a continuing lien on each lot against which an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, will also be the personal obligation of the person or persons who own the lot at the time the assessment falls due, but such

personal obligation will not pass to the successors in title of such person or persons unless expressly assumed by them. With respect to unpaid assessments the Board of Directors or a managing agent appointed by the Board ("Managing Agent") may (but shall not be required to) prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the lot and a description of the lot. Such notice shall be signed by one of the members of the Board of Directors or by one of the officers of the Association or by a representative of the Managing Agent and may be recorded in the office of the County Clerk of El Paso County, Texas. Such lien may be enforced by a foreclosure of the defaulting Owner's lot by the Association in like manner as a deed of trust on real property subsequent to the recording of a notice provided for above. In any such proceeding, the Owner shall be required to pay the costs, expenses and attorney's fees incurred in connection with filing the lien, and in the event of any foreclosure proceeding, all additional costs, expenses and attorney's fees incurred in connection with any such foreclosure proceeding. The Owner of the lot being foreclosed shall be required to pay to the Association the monthly Assessment for the lot during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any Mortgagee may pay, but shall not be required to pay, any unpaid Assessments owing with respect to such Unit, but such payment shall not be deemed a waiver of the Owner's default by either the Association or such Mortgagee.

The amount of the assessment and costs as mentioned above assessed against each lot shall also be a debt of the Owner thereof at the time the Assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien

securing same.

Each Owner, by acceptance of a deed to a lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also temporarily suspend the Association membership rights of any Owner who is in default in payment of any Assessment in accordance with the Bylaws.

The annual assessments levied by the association will be used exclusively to promote the health, safety, welfare, and recreation of the residents in the subdivision, and for the improvement and maintenance of the common areas and of the homes situated within the subdivision. Annual assessments will include, and the association will acquire and pay for out of the funds derived from annual assessments, the following:

- (a) Maintenance and repair of the common area.
- (b) Water, sewer, garbage, electrical, lighting, telephone, gas, and other necessary utility service for the common area.
- (c) Acquisition of furnishings and equipment for the common area as may be determined by the association, including without limitation all equipment, furnishings, and personnel necessary or property for use of the recreational facilities.
- (d) Maintenance and repair of landscaping and median areas within the subdivision.
- (e) Fire insurance covering the full insurable replacement value of the common area, with

extended coverage.

(f) Liability insurance insuring the association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of their occupation or use of the common area. The policy limits will be set by the association, and will be reviewed at least annually and increased or decreased in the discretion of the association.

(g) Worker's compensation insurance to the extent necessary to comply with applicable law.

(h) Any other insurance deemed necessary by the board of directors of the association.

(i) At the option of the board of directors, a standard fidelity bond covering all members of the board of directors of the association and all other employees of the association in an amount to be determined by the board of directors.

(j) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the association is required to secure or pay pursuant to the terms of this declaration or by law, or which will be necessary or proper in the opinion of the board of directors of the association for the operation of the common areas, for the benefit of lot owners, or for the enforcement of these restrictions.

(k) In addition to maintenance of the common area, the association will provide exterior maintenance of each lot as follows: In the event the need for maintenance or repair is attributable to the wilful or negligent act of the owner of a lot, or the owner's family, guests, or invitees, the cost of such maintenance or repairs will be added to and become part of the assessment to which such lot is subject.

The board of directors of the association shall fix the annual assessment at an amount required

to provide for the above reasonable expenses.

In addition to the annual assessments authorized above, the association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement or a capital improvement on the common area, including fixtures and personal property related to such area. Any such assessment must be approved by a majority of each class of members.

Written notice of any meeting called for the purpose of taking any action authorized by the two preceding paragraphs will be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite a majority of each class of members, members who were not present in person or by proxy may give their assent in writing within twenty (20) days after the date of such meeting.

Both annual and special assessments must be fixed at a uniform rate for all lots.

The annual assessments will commence as to all lots on the first day of the month following the conveyance by deed of the lot in the subdivision. The first annual assessment will be adjusted according to the number of months remaining in the calendar year. The board of directors will fix the amount of the annual assessment against each lot a least twenty (20) days in advance of the due date of the assessment and will fix the dates such amounts become due. Assessments may be made payable monthly or annually as determined by the Board. Notice of the annual assessments will be sent to every owner subject to the assessment. The association will, on demand and for a reasonable charge, furnish a certificate signed by an officer of the association, setting forth whether the assessment against a specific lot has been paid.

Effect of nonpayment of assessments; remedies of the association. Any assessment not paid within five (5) days after the due date will be deemed in default and will bear interest from the due date at the rate of ten percent (10%) per annum. The association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for by nonuse of the common area or abandonment of the owner's lot.

The assessment lien provided for in this declaration will be subordinate to the lien of any first deed of trust. A sale or transfer of any lot will not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a deed of trust, whether judicial or by exercise of power of sale, will extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer will relieve such lot from liability for any assessment thereafter becoming due or from the lien of such assessments.

#### IV.

Every owner of a lot will have a right and easement of enjoyment in and to the common area will be appurtenant to and will pass with the title to such lot, subject to the following rights of the association:

(a) The right to charge reasonable admission and other fees for the use of any recreational facility situated within the common area;

(b) the right to suspend the right of use of recreational facilities and the voting rights of any owner for periods during which assessments against the owner's lot remain unpaid, and the right, after hearing by the board of directors, to suspend such rights for a period not exceeding ninety (90) days for any infraction of the published rules and regulations of the association;



(c) The right to dedicate or transfer all or any part of the common area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the members. No such dedication or transfer will be effective unless an instrument executed by two thirds of each class of members agreeing to such dedication or transfer has been duly recorded

Subject to such limitations as may be imposed by the bylaws of the association, each owner may delegate the right of enjoyment in and to the common areas and facilities to the members of the owner's family, and to guests, tenants, and invitees.

There will exist reciprocal appurtenant easements as between adjacent lots and between each lot and any adjacent portion or portions of the common area for any encroachment due to the placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this declaration. Such easement will exist to a distance of not more than one foot as measured from any point on the common boundary between adjacent lots, and between each lot and any adjacent portion of the common area, along a line perpendicular to such boundary at such point. No easement for encroachment will exist as to any encroachment occurring due to the willful conduct of an owner.

Other easements.

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision plat. Within these easements, no structure, planting, or other material will be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements in such area

will be continuously maintained by the owner of such lot, except for improvements for maintenance of which a public authority or utility company is responsible.

(b) No dwelling unit or other structure of any kind will be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way will at all times be open and accessible to public and quasi-public utility corporations, their employees, and their contractors, and will also be open and accessible to declarant, its successors and assigns, all of whom will have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

(c) There will exist appurtenant easements of access to all private streets within the subdivision to the city of El Paso for the use of city personnel and equipment on city business.

There will be no judicial partition of the common area, nor will declarant, or any owner or any other person acquiring any interest in the subdivision or any part of it, seek judicial partition of the common area. However, nothing contained in this declaration will be construed to prevent judicial partition of any lot owned in cotenancy.

#### V.

The subdivision will be occupied and used only as follows:

Each lot will be used as a residence for a single family and for no other purpose.

No business of any kind will be conducted on any residence with the exception of the business of declarant and the transferees of declarant in developing all of the lots as provided in this article.

The only business which will be conducted on any lot will be the business of declarant and the transferees of declarant in developing all of the lots as provided in this article.

No sign of any kind will be displayed to public view on a lot or the common area without the prior written consent of the association, except customary name and address signs and lawn signs of not more than five (5) square feet in size advertising a property for sale or rent.

Nothing will be done or kept on a lot or on the common area which would increase the rate of insurance relating to such lot or area without the prior written consent of the association, and no owner will permit anything to be done or kept on the owner's lot or the common area which would result in the cancellation of insurance on any residence or on any part of the common area.

No animals, livestock, or poultry of any kind will be raised, bred, or kept on any lot or on the common area. However, dogs, cats, and other household pets may be kept on lots subject to such rules and regulations as may be adopted by the association, so long as they are not kept, bred, or maintained for commercial purposes. All owners shall comply with all applicable laws.

No rubbish, trash, garbage, or other waste material will be kept or permitted on any lot or on the common area except in sanitary containers located in appropriate areas concealed from public view. The front yards of all residential properties shall be landscaped.

No fence, hedge, wall, or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands will be constructed or maintained on any lot, except that declarant and the transferees of declarant may vary or exceed such height in constructing fences in accordance with existing architectural plans or as may be needed.

No outbuilding, basement, tent, shack, garage, trailer, shed, or temporary building of any kind will be used as a residence either temporarily or permanently. No recreational vehicles, campers, trailers or other similar vehicles will be parked in front of any residential property or within the property's front building setback area established for the property by the City of El Paso.

Nothing will be altered in, constructed on, or removed from the common area except on the written consent of the association.

Declarant or the transferees of declarant will undertake the work of developing the landscaping and median included within the subdivision as shown on Exhibit "A". The completion of that work, is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision be established as a fully occupied residential community as soon as possible, nothing in this declaration shall:

(a) Prevent declarant, declarant's transferees, or the employees, contractors, or subcontractors of declarant or declarant's transferees from doing on any part or parts of the subdivision owned or controlled by declarant or declarant's transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;

(b) Prevent declarant, declarant's transferees, or the employees, contractors, or subcontractors of declarant or declarant's transferees from constructing and maintaining on any part of parts of the subdivision property owned or controlled by declarant, declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the subdivision as a residential community, and the disposition of lots by sale, lease, or otherwise;

(c) Prevent declarant, declarant's transferees, or the employees, contractors, or subcontractors of declarant or declarant's transferees from conducting on any part of parts of the subdivision property owned or controlled by declarant or declarant's transferees or their representatives, the business of completing such work, of establishing the subdivision as a residential community, and of disposing of lots by sale, lease, or otherwise; or

(d) Prevent declarant, declarant's transferees, or the employees, contractors, or subcontractors of declarant or declarant's transferees from maintaining such sign or signs on any of the lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or otherwise of subdivision lots.

As used in this section, the word "transferees" specifically exclude purchasers of lots improved with completed residences.

#### VI.

Each owner will, at such owner's sole cost and expense, repair such owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

#### VII.

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it will be the duty of the owner, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction will be undertaken within three (3) months after the damage occurs, and will be completed within six (6) months after the damage occurs, unless prevented by causes beyond the control of the owner.

#### VIII.

Additional residential property and common area may be annexed to the subdivision with the consent of two thirds of each class of members.

#### IX.

Declarant, the association, or any owner will have the right to enforce, by any proceeding at

law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by declarant, the association, or by any owner to enforce any covenant or restriction so imposed will in no event be deemed a waiver of the right to do so thereafter.

X.

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

XI.

Covenants and restrictions of this declaration may be amended by duly recording an instrument executed and acknowledged by not less than three fourths of each class of members as their designee after their further approval.

XII.

No breach of any of the conditions contained in this declaration or reentry by reason of such breach will defeat or render invalid the lien of any deed of trust made in good faith and for value as to the subdivision or any lot in it; provided, however, that such conditions will be binding on any owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

XIII.

The covenants and restrictions of this declaration will run with and bind the land, and will inure to the benefit of and be enforceable by the association or any member of it for a period of twenty (20) years from the date of this declaration, and thereafter will continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the then owners of at least three fourths of the subdivision lots.



**RETURN TO:**

Tony R. Conde Jr  
2244 Trarwood, ct 206  
El Paso Tx 79935

10

Doc# 98027239  
# pages: 15  
Date : 04-27-1998  
Time : 08:46:45 A.M.  
Filed & Recorded in  
Official Records  
of El Paso County, TX.  
HONORABLE HECTOR ENRIQUEZ, JR  
COUNTY CLERK  
Rec. \$ 37.00

**END OF  
INSTRUMENT**

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL  
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR  
OR RACE IS HEREBY REVOKED AND UNENFORCEABLE UNDER THE LAW  
STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped  
herein by me and was duly recorded in the volume and page of the Official  
Public Records of this Precinct, El Paso County.

APR 27 1998



H  
K