

PROTECTIVE COVENANTS
STONE GATE UNIT THREE
TO THE CITY OF EL PASO, TEXAS

PART A. PREAMBLE

PELLICANO EAST II, LTD., being the owner of the following described property in El Paso County, Texas:

All of STONE GATE UNIT THREE; an Addition to the City of El Paso, Texas, as the same is shown and designated on the plat of said addition recorded in the office of the Clerk of El Paso County, Texas.

does hereby establish restrictive covenants on the said property as follows:

PART B. AREA OF APPLICATION

B-1 FULLY PROTECTED RESIDENTIAL AREA. The Residential Area Covenants in Part C in their entirety shall apply to all lots and blocks in STONE GATE UNIT THREE.

PART C. RESIDENTIAL AREA COVENANTS

C-1 LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No structure shall be erected, altered, or placed or be permitted to remain on any of said lots, or any part thereof, other than one detached single family dwelling not to exceed two stories in height, together with a private garage or carport and other customary appurtenances to private dwellings. No more than one residential structure shall be erected on any lot or site shown on the plat map of said property. The number of lots is restricted to not more than 30 lots.

C-2 ARCHITECTURAL CONTROL. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. After such location with respect to topography and finish grade elevation has been approved and the finish grade of the lot has been completed, such finish grade shall not be altered, changed or disturbed. Approval shall be as provided in Part D.

C-3 DWELLING SIZE. The ground floor of the main structure, exclusive of one-story open porches and garages, shall not be less than 2,500 square feet for a one-story dwelling, and the combined living area of a 1 1/2 or 2 story house shall not be less than 2,500 square feet for up and downstairs. The Architectural Control Committee shall be empowered to grant individually waivers not to exceed 10% of the above minimum area requirements, provided the proposed dwelling shall in general reflect credit to the neighborhood.

C-4 BUILDING LOCATION. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines required for these lots as set in the City of El Paso Zoning Ordinance. In any event, no building shall be located on any lot nearer than 20 feet from the front lot line, nor nearer than 10 feet from the side street lines; nor nearer than 5 feet to interior lot lines except, however, that a garage located at least 65 feet from the property line may be placed not nearer than 3 feet from the lot line of interior lots. For the purposes of this covenant, boxed and bay windows, eaves, steps, and open porches or stoops, and projections of fireplaces and windows shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

C-5 LOT AREA AND WIDTH. No dwelling shall be erected or placed on any lot having an average width of less than seventy (70) feet, nor shall any dwelling be erected or placed on any lot having an area of less than eight thousand (8,000) square feet. No lot shall be resubdivided to an average width of less than seventy (70) feet.

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C-6

LOT DRAINAGE. All lots within the subdivision, whether vacant, with buildings under construction or with completed buildings (occupied or unoccupied) shall be designed and constructed to provide positive lot drainage as required by the pertinent governmental authorities at the time from the rear of the lot to the street in front of the lot. This positive lot drainage to the street in front of each lot must be maintained at all times by the Owner. Driveways, patios, walks, landscaping (including without limitation, grass, bushes, trees, brick, rock or other materials), and all other portions of each lot shall be constructed, installed and shall be maintained to drain away from the main building structure, and swaled, sloped or slanted through the rear, side and front yards so as to drain to the street in front of the lot. If necessary, roof drainage will be collected in gutters and diverted toward the front of the lot. Walls or other structures should not be placed along the side of any dwelling in a manner that would block or impair drainage from the rear of the lot to the street. Any variance from this drainage requirement shall only be made with the express written approval of the Architectural Control Committee. **FAILURE BY AN OWNER (INCLUDING BUILDERS) TO MAINTAIN THE PROPER DRAINAGE CAN RESULT IN DAMAGE TO THE IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) FROM SETTLING AND/OR EROSION ON THE SUBJECT LOT AND ON SURROUNDING LOTS.**

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C-7

SLOPE CONTROL. As determined by the pertinent governmental agencies some lots may have designed, sloped area within the lot located to the side or rear of the lots. Soil conditions and/or storm drainage requirements, as stated by pertinent governmental authorities at the time, may dictate that the sloped areas be secured by a slope stabilization treatment and/or retaining walls. **IT SHALL BE THE SOLE RESPONSIBILITY OF THE LOT OWNER WHOSE PROPERTY INCLUDES A SLOPED AREA(S) TO MAINTAIN AND/OR STABILIZE THE SLOPED AREA(S).** Drainage of sloped area shall typically be controlled within the lot and drain to the street in front of the lot. However, if rear or side yard drainage easements are provided across adjoining lots connecting to subdivision streets or drainage rights of way, then the slope drainage may be diverted to flow through the easements to a connecting street or drainage right of way. Each property owner shall be responsible for maintenance of that portion of any private drainage easement within their property. **FAILURE BY THE OWNER TO MAINTAIN OR STABILIZE THE SLOPE AND/OR DRAINAGE EASEMENT, IF ANY, FOR PROPER DRAINAGE MAY RESULT IN DAMAGE TO IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) ON THE SUBJECT LOT AND ON SURROUNDING LOTS.**

Storm drainage, landscape irrigation, swimming pool drainage or overflow or any other waterflow on or over the lots SHALL FLOW TO THE STREET ONLY AND NOT OVER SIDE OR REAR SLOPED AREAS WHETHER SAID SLOPES ARE WITHIN THE PROPERTY LINES OF THE LOT OR NOT. All surface drainage of the flat buildable areas of the lot shall be controlled and maintained as provided in paragraphs C-6 and C-7 herein.

Landscaping of the sloped areas at the side or rear of the lots may be permitted within the use of regional desert plants that can survive on the natural rainfall upon the slope. **LANDSCAPE IRRIGATION OF ANY TYPE IS EXPRESSLY FORBIDDEN ON THE SLOPED AREAS OF THE LOTS.**

C-8

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

C-9

NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. No owner shall operate or allow to be operated on any lot or tract any electronic transmission or receiving device or equipment which interferes with normal radio, television, telephone or other electronic transmission or receiving devices or equipment of any other owners or residents in the subdivision. No owner shall erect, construct, place or permit to remain on any lot or tract any tower, antenna or similar structure which is higher than 10 feet above the highest part of the roof of the dwelling on that lot or tract. Any satellite receiving dish or similar structure shall not be visible from the street.

C-10

TEMPORARY STRUCTURES. No structure of a temporary character (trailer, basement, tent, shack, garage, barn, or other outbuilding) shall be used on any lot at any time as a

residence, either temporarily or permanently. During the period of construction within the subdivision and until all houses constructed thereon have been sold, the use of temporary construction trailers, completed homes or model homes may be used as sales offices and construction and/or administrative offices for the builders. Upon completion and sale of all houses in the subdivision, all such use will terminate and any temporary construction trailers will be removed from the subdivision. All boats, camping trailers, recreational vehicles, or mobile homes shall be placed in the rear yard.

- C-11 **FENCES AND GARDEN WALLS.** No fence or garden wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line, except that on corner lots a fence may be placed or erected along the rear lot line from the interior lot line to the side street lot line, and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude any necessary retaining walls. Masonry fences only shall be permitted across the rear of any lot, the interior lot line of any lot, or along the side yard of a corner lot where such side yards abut on a side street. It is the intent of these covenants that all property line walls shall be constructed using native red rock materials. However, if said red rock becomes unavailable or cost prohibitive, the Architectural Control Committee may approve an alternate material for the walls.
- C-12 **COMPLETION OF STRUCTURES.** A structure once commenced shall be completed as to exterior in accordance with the provisions of these restrictions in not more than 180 days from the date of commencement.
- C-13 **SIDEWALKS.** Every person constructing a residence on any lot in said subdivision shall also place a sidewalk across the front of the lot, or front parking. Sidewalks shall be placed along side yards of corner lots.
- C-14 **SIGHT DISTANCE AT INTERSECTIONS.** No fence, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- C-15 **MISCELLANEOUS.** Except as required by ordinance during construction, no privy shall be placed upon any lot in said subdivision. No signboard may be placed upon any lot, other than one 18 inch by 24 inch sign or lot pertaining to the sale of lots or the builder's signs which may be placed upon the premises during the construction of improvements and sales of the property. Marketing and directional signs pertaining to the sale of houses may also be placed on lots other than those on which houses are being constructed. No excavations shall be placed on the said property for the purpose of obtaining sand, rock, clay, dirt, coal, or gravel, whether for profit or otherwise. No hog pen, stockyard or pen, or chicken pen will be allowed, whether operated for profit or otherwise.

PART D. **ARCHITECTURAL CONTROL COMMITTEE**

- D-1 **MEMBERSHIP.** The Architectural Control Committee is composed of Mr. Timothy C. Foster, Mr. Douglas A. Schwartz, and Mr. Robert F. Foster, all of El Paso, Texas. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members of the Committee shall have full authority to designate a successor. None of the members of the Committee nor their designated representatives shall be entitled to any compensation for service performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly written recorded instrument to change the membership of the Committee or reduce or restore to it any of its powers and duties.
- D-2 **PROCEDURE.** The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove plans and specifications within 30 days after they have been

submitted to it, or if no suit to enjoin the construction has been commenced prior to the completion of the improvements, approval will not be required and the related covenants shall be deemed to have been fully complied with.

- D-3 **MEMBERS COMPENSATION AND LIABILITY.** None of the members of the Committee or its designated representative shall be entitled to any compensation for service performed pursuant to this covenant. Architectural control of construction, as provided in Section C-2 and D-2 above, being largely subjective in nature, the action or nonaction by the members of the Committee shall not subject any member of the Committee to personal liability nor shall the members of the Committee be charged with the responsibility of enforcing the provisions of Section C-2 and D-2, including without limitation, the requirement for submitting plans and specifications. The enforcement of architectural control provisions under C-2 and D-2 by any aggrieved party shall be as provided in Section E-3 below, and shall be pursued solely against the person or persons allegedly violating or attempting to violate the provisions and standards specified in C-2 and D-2 of the Covenants. The members of the Architectural Control Committee shall not be proper parties to such action.
- D-4 **TERMINATION OF INITIAL MEMBERSHIP.** After houses have been built upon 100% of the lots in **STONE GATE UNIT THREE**, membership of the Committee of those persons named in D-1 shall automatically terminate without action or resignation by such initial members. The resulting vacancy or vacancies thereafter occurring shall be filled by the vote of a majority of the record owners of the lots in the subdivision. Successors to membership in the Architectural Control Committee shall be named in an instrument executed and acknowledged by the then Chairman of the Committee who shall be elected by a majority of its then members. Such instrument shall be recorded in the public records of El Paso County, Texas.

PART E. **GENERAL PROVISIONS**

- E-1 **TERM.** These covenants are to run with the land and shall be binding on all parties of all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, unless amended as hereinafter provided in Paragraph E-2 after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.
- E-2 **AMENDMENT.** The undersigned expressly reserves the right to amend these restrictions at any time as to any remaining land owned by them at such time, and such amendment shall in no way serve to release, modify or affect these protective covenants as to any land theretofore conveyed. Provided however, it is expressly agreed and understood that the conditions and restrictions contained herein pertaining to density may only be amended, released, revised or modified with the prior written consent of the City of El Paso.
- E-3 **ENFORCEMENT.** These covenants shall run with the land in favor of and enforceable by any owner of any lot (or portion thereof) within the subdivision or the holder of any first lien mortgage of any such lot or portion thereof provided that the City of El Paso shall be entitled to enforce the residential density covenants contained in paragraph C-1 herein. Enforcement shall be by procedure at law or equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to cover damages. In such event the person violating or attempting to violate any covenant shall be charged with all cost of suit, including reasonable attorney's fee. The authority to seek enforcement of these covenants is limited to owners of lots which are subject to and protected by the terms of the covenants and the City of El Paso. Failure or delay to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- E-4 **SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- E-5 **ZONING.** Nothing contained in these covenants shall supersede the applicable zoning laws of the City of El Paso.

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PART F. ATTEST

EXECUTED THIS 15th day of August, 2000.

ATTEST & SEAL NOT REQUIRED
BY AUTHORITY OF BOARD OF
DIRECTORS

PELLICANO EAST II, LTD.
BY: PELLICANO DEVELOPERS, INC.
ITS GENERAL PARTNER

By: Timothy C Foster
Timothy C. Foster, President

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 15th day of August, 2000, by TIMOTHY C. FOSTER, President of PELLICANO DEVELOPERS, INC., a Texas corporation, on behalf of said corporation.

Susan McMillan
NOTARY PUBLIC FOR THE STATE OF
TEXAS



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Filed & Recorded in

Official Records of

EL PASO COUNTY

HECTOR ENRIQUETA, JR

COUNTY CLERK

Fees \$15.00

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ANY PROVISIONS HEREIN WHICH RESTRICT THE SALE, REPRISAL, OR USE OF THE RECORDS HEREIN IN ANY MANNER IN ANY STATE OR COUNTY OF TEXAS ARE HEREBY REVOKED AND DEEMED VOID AND OF NO FORCE OR EFFECT. ANY INSTRUMENT FILED IN THE OFFICE OF THE COUNTY CLERK OF EL PASO COUNTY, TEXAS, SHALL BE DEEMED TO HAVE BEEN FILED IN THE OFFICE OF THE COUNTY CLERK OF EL PASO COUNTY, TEXAS, AND SHALL BE DEEMED TO HAVE BEEN FILED IN THE OFFICE OF THE COUNTY CLERK OF EL PASO COUNTY, TEXAS.

AUG 23 2000



EL PASO COUNTY, TEXAS

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**END OF
INSTRUMENT**