

2022929<sup>1</sup>

**COVENANTS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDE, LIENS, RESERVATIONS AND EASEMENTS (SINGLE FAMILY) FOR STONEGATE a part of the MARSHAL UNIVERSITY SURVEY, A-636 and being all of that 168.86 acres, of the Official Public Records of Smith County, ACCORDING TO THE PLATS IN CABINET D, SLIDES B, C & D OF THE PLAT RECORD OF SMITH COUNTY, TEXAS.**

This Declaration of Covenants, Conditions, Assessments, Charges, Servitude, Liens, Reservations and Easements (herein called the "Declaration") is made this 8<sup>TH</sup> day of APRIL, 2002 by TYLER STONEGATE DEVELOPMENT PARTNERS, LTD. ,(herein called "Declarants").

**WITNESSETH:**

WHEREAS, Declarants own those certain 168.86 acres being part of the Marshal University Survey, A-636, and being all of that land conveyed to TYLER STONEGATE DEVELOPMENT PARTNERS, LTD. by deed recorded in the year 2002 under Clerk's File Number 2002-R0017172 Official Public Records of Smith County, Texas;

WHEREAS, in order to enable Declarants to implement a general plan of development and accomplish the development of such lands as a residential development of high quality which interfaces with the natural beauty of the East Texas landscape, Declarants desires to subject the property described in the above referenced plat to the covenants, conditions, assessments, charges, servitude, liens, reservations and easements, hereinafter set forth (herein collectively called the "Covenants"). Declarants desire to admit Declarants property into the existing development plans as to the joint use of all roadwork, easements, and the payment of assessments for the joint use thereof.

NOW, THEREFORE, Declarants hereby declares that the property shall be held, sold and conveyed subject to the following:

**ARTICLE I**

**Definitions**

The following words, phrases or terms used in this Declaration shall have the following meanings:

- A. "Assessment" shall mean the charge levied and assessed from time to time by the Declarants against each lot or any portion or subdivision of the property.
- B. "Architectural Review Committee" shall mean the Declarants, or, if and when applicable, a committee, corporation or association appointed or established by Declarants for the purpose of exercising architectural control, all as set forth in the reservation of architectural control.
- C. "Assessable Property" shall mean each of the lots, except such lots as may from time to time constitute exempt property.
- D. "Assessment Lien" shall mean the lien created and imposed by Article VII hereof.
- E. "Covenant" shall mean the covenants, conditions, assessments, charges, servitude, liens, reservations and easements set forth herein.
- F. "Co-Declarants" not applicable.

G. "Declarants" shall mean TYLER STONEGATE DEVELOPMENT PARTNERS, LTD., and any successors and/or assigns of Declarants obligations rights and powers hereunder, but with respect to any such successors or assigns (i) such successors or assigns shall not be deemed to be a "Declarants" unless such successors or assigns are designated as such pursuant to a written instrument signed by Declarants (which written instrument shall be filed of record in the Real Property Records of Smith County, Texas, designating that part of the property to which it relates) and (ii) such successors or assigns shall only have those rights and powers of Declarants which are specifically assigned to such successors or assigns pursuant to such written instrument.

H. "Declarants Land" shall mean such parts of the property, including but not limited to the easements, reserved areas, roadways, and lots owned by Declarants, together with the buildings, structures and improvements thereon, if any, as may be owned now or at any time hereafter by the Declarants, for so long as the Declarants is the owner thereof.

I. "Declaration" shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitude, Liens, Reservations and Easements as may be amended or supplemented from time to time.

J. "Deed" shall mean a deed or other instrument conveying a freehold estate or a fee estate to all or any portion of the property.

K. "Dwelling Unit" shall mean any portion of a building situated on a lot designed and intended for use and occupancy as a residence by a single family.

L. "Exempt Property" shall mean the following parts of the property: (i) all land and permanent improvements owned by or dedicated to and accepted by the United States, the State of Texas, the County of Smith, the City of Tyler, or any other political subdivision thereof, (ii) easements shown on the subdivision plat, (iii) pipeline easements, and (iv) all of Declarants land as described in Article I, Paragraph G above.

M. "Lot" shall mean any parcel described in any future Plat of the 168.86 ACRES as described herein, together with any lots, which may, from time to time result from a resubdivision, combination or division of any such parcels, as may be shown upon other plats of the property, now or hereafter filed for record in the Plat Records of Smith County, Texas.

N. "Maintenance Charge" shall mean any and all costs assessed pursuant to Article V, Section 5.01 hereof.

O. "Owner" shall mean the person or persons, entity or entities who either own a recorded freehold estate or a fee estate to a lot, or parcel, or a successor or assignee thereof, or has entered into a Contract for a Deed with Declarants, covering a lot or any other portion or parcel of the property; the term "Owner" shall exclude any person or persons, entity or entities, having an interest in a lot or any such parcel merely as security for the performance of an obligation. For the purposes hereof, the term "Contract for Deed" shall be a contract executed by Declarants with another person, containing as its title or as part of its title the term "Contract for Deed" pursuant to which such person is acquiring a lot or any such parcel on an installment basis whereby Declarants does not transfer the freehold estate or fee estate to the lot until such person has satisfied all of the terms and conditions of such contract.

Covenants, Conditions, Assessments, Charges, Servitude, Liens, Reservations and Easements for 168.86 acres.

P. "Permanent Improvements" shall mean with respect to any lot or portion or parcel of the property, any and all improvements, structures, and other materials and things, including, but without limitation, trees, shrubs, flowers, hedges and fences.

Q. "Plat" shall mean the subdivision plat of any portion of the property presently on file in the Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the property, now or hereafter filed for record in the Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time).

R. "Property" shall mean the property depicted on the survey of the 168.86 acres as described herein and any other plat or plats of all or any portion of the property described in said plat which may be hereafter filed for record in the Plat Records of Smith County, Texas said 168.86 acres being more completely described in Exhibit "A".

S. "Reserved Areas" shall mean those areas, if any, of the property (including without limitation, all easements, including, but not limited to landscaping easements) which are designated on the plat or reserved herein, the ownership of which are reserved to Declarants and its successors and assigns.

T. "Subdivision Plat" shall mean the plats describing the residential subdivisions and roads located in Smith County, Texas, and known as **STONEGATE** recorded or to be recorded in the Plat Records of Smith County, Texas, as said Plat may be amended or supplemented from time to time.

U. "Association" shall refer the **STONEGATE HOMEOWNERS ASSOCIATION**.

V. "Design Guideline" shall refer to a certain document prepared by the Architectural Review Committee establishing the method of submission of matters for approval to the Architectural Review Committee and guidelines for design, location, materials and other relevant matters. The Architectural Review Committee shall have the authority to add, delete or change such Design Guideline from time to time at its discretion.

## ARTICLE II

### Covenants Binding on Property and Owners

2.01 Property Bound. From and after the date of recordation of this Declaration, the property shall be subject to the Covenant, and the Covenant shall run with, be for the benefit of, bind and burden the property.

2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenant shall be binding upon and inure to the benefit of each Owner and his heirs, executors, administrators, personal representatives, successors and assigns, whether or not so provided or mentioned in the deed, except with respect to the exempt property, and each owner, for himself, his heirs, executors, administrators, personal representatives, successors and assigns expressly agrees to pay and become personally liable for the assessments provided for hereunder and to bound by all of the covenants herein set forth. Except with respect to exempt property, each owner shall be and remain personally liable (regardless of whether he has transferred title to his lots) for the amount of

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assessments, together with interest, costs and attorneys fees as provided herein which fall due while he was an owner. No owner shall escape personal liability for the assessments herein provided by nonuse of the reserved areas, or by transfer or abandonment of a parcel or lot.

### ARTICLE III

#### General Restrictions

3.01 Single Family Residential Purposes. All lots in the property shall be used only for single family residential purposes. No obnoxious or offensive activity of any sort shall be permitted, nor shall any thing be done on any lot, which may be or become an annoyance or nuisance to the neighborhood. No lot shall be used for any commercial, business or professional purposes. The renting or leasing of any improvements thereon or a portion thereof without the prior written consent of the Declarants is prohibited.

3.02 Type of Structures. No building shall be erected, altered or permitted to remain on any lot other than one (1) detached single family residential dwelling not to exceed three (3) stories in height. Each such dwelling unit shall have a private garage which may be detached from the main residential structure but shall be fully enclosed, covered and maintain the architectural integrity of the single family residence located on the same lot, unless otherwise approved by Architectural Review Committee. Under no circumstances will outbuildings (storage buildings) or other structures be allowed to be moved onto or built upon the lot without prior written consent of the Architectural Review Committee. Entrances to the garage from the front of the dwelling will not be allowed, but all garage entrances shall be covered with industry standard garage doors, except where other doors are approved by the Architectural Review Committee.

3.03 Minimum Square Footage. The living area of such residence (exclusive of porches, patios, garage, terraces or driveways) on each lakefront lot shall be not less than 3,000 square feet. The living area of such residence (exclusive of porches, patios, garage, terraces or driveways) on each non-lakefront lot shall not be less than 2,500 square feet.

3.04 Setbacks. As to any lot, except with respect to walls, fences, planters, hedges or other screening material, no permanent improvement, or any part thereof, including roof overhang, shall be nearer than fifty (50) feet to any side street line or front property line, nor may any improvement or any part thereof, including roof overhang, be nearer than twenty five (25) feet to any rear property line, nor may any permanent improvement or any part thereof, including roof overhang, be nearer than fifteen (15) feet to any adjacent property line. In the event setback lines established on the plat are more restrictive than the foregoing, such setback lines established on the plat shall control.

In the event that an Owner desires to purchase two (2) lots for the purpose of building a structure that would violate any side set-back line or be built upon both lots, such ownership shall be limited to only one dwelling per such two (2) lot combination. Such violation of the set-back lines and/or building across lot lines must be approved by the Architectural Control Committee.

3.05 Walls, Fences, Hedges and Other Screening Material. No wall, fence, planter, hedge or other screening material shall be placed on the property without the approval of the Architectural Review Committee.

3.06 Driveways. As to any lot, all driveways shall be entirely of concrete, or approved by the Architectural Review Committee and shall be paved before any dwelling unit may be occupied. No driveway or other roadway may be constructed on any lot in such a manner as to furnish access to any adjoining lots or other property without the prior written consent of the Architectural Review Committee. All drive ways shall be constructed in such a manner that all run-offs will not cause erosion problems to adjacent lots or the lake. Erosion control will be the responsibility of each individual property owner during the construction and continuing on an ongoing basis after the completion of the residence.

3.07 Walks. Walks will be required along the streets in the entire property and will be the responsibility of the owners of the individual lots. Walks shall be constructed that are parallel with curb lines at such locations, and under such specifications as set forth in the Design Guideline prescribed by the Architectural Review Committee. Walks from the street curb to the dwelling unit shall be constructed at such locations and under such specifications as set forth in the Design Guideline prescribed by the Architectural Review Committee. All walks on lots or on easements contiguous to lots shall be maintained by Owner and will be constructed with materials that are compatible with the property.

3.08 Construction Materials. All materials used in the construction of the exterior of any dwelling unit or other structure shall be as prescribed in the Design Guideline and must be approved by the Architectural Review Committee. All solar collectors and panels to be incorporated into the design of any dwelling unit will not be allowed to be viewed from the street, and must receive specific approval from the Architectural Review Committee prior to the commencement of construction. Only new construction materials shall be used (except for used brick, if and as approved by the Architectural Review Committee on a case by case basis). No concrete blocks shall be used in construction unless the blocks are covered up by the final exterior finish material. All dwelling units shall be built on a slab, solid concrete beam foundation or a pier and beam foundation approved by the Architectural Review Committee. In no event shall any used building be moved onto any lot.

3.09 Prosecution of Construction. With reasonable diligence, and in all events within twelve (12) months from the commencement of construction, unless completion is prevented by war, labor strike or by an act of God, any dwelling unit or other structure commenced upon any lot shall be completed as to its exterior and all temporary structures shall be removed.

3.10 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any dwelling unit.

3.11 Utilities. Each and every dwelling unit shall be required to be connected to the City of Tyler water distribution system furnished to the subdivision. Individual underground electrical, phone, cable and gas services must be installed to service each dwelling unit. Each owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in the applicable utility company rules, regulations and terms and conditions of service, as same may be amended from time to time without notice. Each lot shall be impressed with a 5 foot utility easement for the installation of a water meter and for the installation of other utilities.

3.12 Cutting of Trees. Each home shall be required to submit a detailed site plan which includes (1) tree survey of any trees exceeding 6" in diameter, (2) layout of the house, driveways and walkways (3) preliminary layout of landscaped areas. Any cutting of trees in excess of 6" prior to and

after the completion of the home cannot be allowed, without the written approval of the Architectural Review Committee.

3.13 Sprinkler Systems. All homes will be required to maintain a sprinkler system which will be used on a regular basis for the maintenance of and perpetuation of the vegetation associated with each lot.

#### ARTICLE IV

##### STONEGATE

4.01 Association. The Stonegate Homeowners Association has been formed for the particular purpose of joint road maintenance and the joint use of certain common facilities for the mutual benefit of the owners, is hereby incorporated into the association and all lot owners shall be obligated to pay dues to the association.

#### ARTICLE V

##### Maintenance

5.01 Owner's Failure to Maintain. In the event any portion of the property (other than Declarants land) or any dwelling unit thereon, is in the judgment of the Declarants so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially detract from the appearance or quality of the surrounding lots or other areas of the property or any adjacent land owned by Declarants, or his successors or assigns, not presently included in the property, but which is substantially affected thereby or related thereto, or (iii) in such a manner as to constitute a breach of the covenants, the Declarants, in any such instances, may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver notice thereof to the offending Owner, that unless corrective action is taken within ten (10) days, the Declarants will cause such action to be taken at such Owners cost. If after the expiration of said ten (10) day period of time the requisite corrective action has not been taken, the Declarants shall be authorized and empowered to cause such action to be taken and the cost thereof, including but not limited to the cost of collection, court costs and attorneys fees (which costs being herein collectively called the "Maintenance Charge"), together with the interest accruing thereon from the expiration of such ten (10) day period, at the rate of Ten (10%) percent per annum shall be assessed against the lot and the dwelling unit of the offending owner. The maintenance charge, together with all interest accruing thereon, shall be referred to as an assessment on such lot, secured by the assessment lien provided in Article VII herein and enforced as provided in Article VIII herein and other provisions hereof. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such maintenance charge and shall demand payment thereof within thirty (30) days after the date of said notice.

5.02 Actions of Declarants. Declarants, at Declarants discretion, may beautify, improve, construct, maintain and install permanent improvements in, upon and under the reserved areas, and in addition thereto, the Declarants may perform such other construction, alteration, maintenance, provisions and operations as provided in Article IX hereof.

**ARTICLE VI****Assessments**

6.01 In order to provide funds for the purposes and uses specified in Article V, Section 5.02 hereof, the Declarants shall have the right to levy assessments against the assessable property to be prorated among said assessable property on a per lot basis. The Declarants shall also have the right and authority to increase or decrease said assessment as the Declarants may deem necessary from time to time and payable at such times and places as the Declarants may in his sole discretion determine.

**ARTICLE VII****Imposition of Lien; Exemptions; Owner's Agreement**

7.01 Imposition of Assessment Lien and Priority of the Lien. Except with respect to exempt property, each lot shall be charged with and subject to a continuing servitude and lien from the date of recordation of this Declaration for the amount of the assessments levied and assessed against each such lot for the purposes set forth in Article V hereof, for any interest accrued on any assessments and for any and all costs, including court costs and attorney's fees incurred by Declarants in collecting same. Except as otherwise provided herein, the lien (herein called the "Assessment Lien") against each lot shall be superior to any and all other charges, liens, or encumbrances, which hereafter in any manner may arise or be imposed on each such lot, except that such assessment lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior.

7.02 Owner's Promises. Each Owner owning a portion of the assessable property, for himself, his heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees: (i) that he will pay to the HOMEOWNERS ASSOCIATION when due the assessments levied against his lot; (ii) that he acquires his lot subject to the assessment and the assessment lien, as same may exist from time to time; and (iii) that by accepting a deed to his lot, he shall be and shall remain, personally liable for any and all assessments assessed against his lot while he is (or was) the owner thereof, regardless of whether such covenants or agreements are expressed in such deed and regardless of whether he signed the deed.

**ARTICLE VIII****Enforcement of Payment of Assessment  
Charges and Assessment Lien**

8.01 Declarants as Enforcing Body. The Declarants shall have the exclusive right to enforce the provisions of this Declaration.

8.02 Declarants Enforcement Remedies. If the Owner of any lot constituting a portion of the assessable property fails to pay any of the assessments when due, or pay any interest accrued, and any and all costs (including Court costs and attorneys fees) incurred by the Declarants in collecting same, the Declarants may enforce the payment of the assessments and all interest accrued thereon and costs incurred by the Declarants in collecting same, and/or enforcing the assessment

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lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Declarants does not prejudice his exercise of any other remedy) (i) bring an action at law and recover judgment against the Owner personally obligated to pay the assessments; (ii) enforce the assessment lien against the lot by any means available at law or in equity including, without limitation, a nonjudicial foreclosure sale of the lot, such sale to be conducted in the manner as set forth in Section 51.001 et seq. of V.T.C.A. Property Code of the State of Texas as the same may be amended or supplemented from time to time. The Declarants or any other owner may be the Purchaser at any such foreclosure sale.

8.03 Subordination to the First Mortgage or Deed of Trust. The assessment lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is an institutional lender which is chartered or licensed by the United States or any State within the United States. The sale or transfer of any lot shall not affect the assessment lien, provided, however, that if the sale or transfer is pursuant to foreclosure of such mortgage or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any Grantee taking by deed in lieu of foreclosure, the assessment lien immediately shall become and remain superior to any and all other charges, liens and encumbrances (except liens for taxes or other public charges, which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing) and at such mortgage and deed of trust foreclosure sale, purchaser or Grantee shall (i) take subject to all assessments and other assessment liens therefore accruing subsequent to the date of the issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure; and (ii) be and remain personally liable for all assessments, together with interest, costs and attorney's fees as provided herein which may fall due while he is an Owner.

8.04 Costs to be borne by Owner in Connection With Enforcement. In an action taken pursuant to this Article, the Owner shall be personally liable for, and the assessment lien shall be deemed to secure the amount of the assessment together with interest and the Declarants costs and attorney's fees.

## ARTICLE IX

### Use of Funds

9.01 Purposes for Which Funds May be Used. The Declarants shall apply all funds collected and received by him through his imposition of assessment for the benefit of the property (including the reserved areas), the Owners and residents of the subdivision by devoting said funds among other things to the purposes set forth in Article V, Section 5.02 hereof, and for the formation and maintenance of the construction, alteration, maintenance, provision and operation by any manner or method whatsoever, of any and all land, amenities, properties, improvements, facilities, services, projects, programs, studies, landscaping, recreation, utilities, roadways, and safety. The Declarants may also establish such reserves as the Declarants may deem necessary to provide for future expenditures which may be needed to be made pursuant to this section. The Declarants may also expend his funds for any purposes for which any municipality may expend its funds under the law of the State of Texas or such municipality's charter, including by way of illustration, all purposes (enumerated or implied) for which the City of Tyler, Texas, may expend its funds pursuant to the charter of the City of Tyler. The Declarants shall not have the obligation to account to any Owner for the collection or use of any funds collected and received by Declarants through its imposition of the assessments.

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## ARTICLE X

## Rights and Powers

10.01 Enforcement. The Declarants shall have the right to enforce the Covenant set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitude, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument affecting all or any part or parts of the property. Any instrument recorded subsequent to the recordation of this Declaration shall at all times be subordinate and inferior to this Declaration whether or not provided in such instrument.

10.02 Right to Inspect. The Declarants shall have the right to enter all lots for the purposes of inspecting whether or not the Owner thereof is in compliance with the covenant. If, during the course of construction of a dwelling unit upon a lot, Declarants determines that there is a violation of the Covenant, the Declarants may order a discontinuance of construction of the dwelling unit until such time as corrective measures have been taken to assure full compliance with the covenant. If an Owner fails to immediately discontinue such construction of the dwelling unit, such failure shall constitute a violation of this Declaration by the Owner.

## ARTICLE XI

Easements and Rights of Enjoinment In  
Reserved Areas, Reservation of Declarants

11.01 Reservations of Declarants. The following reservations are hereby made By Declarants:

A. The utility easements shown on the Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Declarants to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, television cable lines, security, gas, water, sanitary sewers, storm sewers and any other utility or service which Declarants may find necessary or proper. All lots and roadways are hereby impressed with utility easements as necessary for installation and maintenance on behalf of utility companies.

B. Declarants reserve the right from time to time to make changes in the location, shape and size of, and additions to the easements described in the foregoing section for the purposes of more efficiently installing utilities therein and thereon.

C. The title conveyed to any part of the property shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, pipes, conduits, cable television lines or other appurtenance or utilities constructed by Declarants or public utilities companies upon, under, along, across or through such utility easements; and the right (but no obligation) to construct, maintain, repair and locate such systems, utilities, appurtenances and facilities is reserved to Declarants, his successors and assigns.

D. The right to sell or lease the lines, utilities, appurtenances and other facilities described in this Article to any municipality, governmental agency, Public Service Corporation or other party is hereby expressly reserved to Declarants.

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E. Neither Declarants nor his successors or assigns shall be liable for any damage done by any of the parties or any of their agents or employees to shrubbery, trees, flowers or other property of an Owner situated on the lots covered by the above described utility easements.

F. The right to enter upon any lot or lots during the installation of streets for the purpose of performing street excavation, construction and paving is hereby reserved to Declarants, his successors and assigns, and neither Declarants, nor his successors or assigns shall be liable for any damage done by any such party or parties or any of their agents or employees to shrubbery, trees, flowers or other property of the Owners which is necessitated by such street construction.

## ARTICLE XII

### Further Conveyances of and Modifications to Declarants Land

12.01 The Declarants shall have the absolute, exclusive and unrestricted right, exercisable in his sole discretion, without consent from any other, to (i) sale, transfer, convey, lease, dedicate, encumber or in any manner alienate to any public or private entity the Declarants land or any part thereof and any rights of Declarants under this Declaration, or otherwise deal with the Declarants land or any part thereof, including the reserved areas and roadways, upon such terms and in such manner as Declarants in his sole discretion may determine, or (ii) modify the nature, scope, location, configuration, construction, design or other characteristics of the Declarants land or easements reserved herein.

## ARTICLE XIII

### Architectural Control

13.01 Prior Approval. No building, fence, wall, sign, exterior light or other structural apparatus, either permanent or temporary shall be commenced, erected, placed or maintained upon any lot, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision or resubdivision thereof, including, without limitation, changes in the alteration of grade, landscaping, roadways and walkways be made until the plans and specifications showing the nature, kind, shape, height, materials, color, location and other material attributes of the same shall have been submitted to and approved by Declarants or by an Architectural Review Committee composed of three or more representatives appointed by Declarants. Such plans and specifications shall satisfy the format prescribed by the Declarants or the Architectural Review Committee and a fee shall be charged for such review. In the event Declarants or his designated committee fails to approve or disapprove the plans and specifications within thirty (30) days after said plans and specifications have been submitted, approval will not be required and this Article will be deemed to have been fully complied with. Non-exercise of the powers herein reserved by Declarants in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other different plans and specifications. In the absence of gross negligence or willful misconduct attributable to the Declarants, or an Architectural Review Committee appointed by Declarants, neither Declarants nor the Architectural Review Committee shall be liable for the improper enforcement or failure to exercise any of the powers reserved unto Declarants pursuant to this Article. In no event shall any approval obtained from Declarants or the Architectural Review Committee

pursuant to the terms of this Article are deemed to be a representation of any nature regarding the structural safety or engineering soundness of the structure or other items for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations; nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval.

#### ARTICLE XIV

##### Use Restrictions

14.01 Use Restrictions Applicability. Except with respect to exempt property, including the Declarants land, all lots are hereby restricted as follows:

A. Antennas. No exterior television, radio or other antennae of any type shall be placed, allowed or maintained upon any lot without the prior written approval and authorization of the Declarants.

B. On Street Parking. On street parking is restricted to approved delivery, pick up or short time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Declarants.

C. Storage. No exterior garage or any items of any kind shall be permitted, except with prior written approval and authorization of the Declarants. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals by the Architectural Review Committee) from view from neighboring properties, dwelling units and streets. This provision shall apply without limitation to wood piles, camping trailers, boat trailers, travel trailers, boats, mobile homes and unmounted pickup camper units. Also, without limitation, no automobile, truck or other vehicle, regardless of ownership, age, condition or appearance shall remain on any lot which could be construed as being stored, neglected, abandoned or otherwise not in frequent use except pursuant to written approval and authorization of the Declarants. All of these exceptions under this clause shall be subject to all required setback provisions in Article III, 3.04.

D. Garbage. No garbage or trash shall be placed at the exterior of any building, except in sixty (60) to eighty (80) gallon containers meeting the specifications of the Declarants and the placement, maintenance and appearance of all such containers shall be subject to reasonable rules and regulations of the Declarants. All rubbish, trash and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon. In any case the current requirements of the City of Tyler Sanitation Department shall prevail.

E. Outside Lighting. No outside lighting other than direct lighting shall be placed, allowed or maintained on any lot without the prior written approval and authorization of the Declarants.

F. Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any lot, except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Declarants, provided, however, that dogs, cats, birds or fish, may be kept thereon as household pets so long as (in the discretion of the Declarants) such pet is not or does not become a nuisance, threat or otherwise objectionable to other owners.

G. **Resubdivision.** No lot shall be further subdivided, and no portion less than all of such lot or any easement or other interest therein shall be conveyed by any owner without the prior written authorization of the Declarants.

H. **Diseases and insects.** No Owner shall permit anything or condition to exist upon any lot which shall induce, breed or harbor plant disease or noxious insects.

I. **Machinery, Fixtures and Equipment.** No machinery, fixtures or equipment of any type, including without limitation, air conditioning or refrigeration equipment and clothes lines, shall be placed, allowed or maintained upon the ground on any lot except with prior written approval and authorization of the Declarants in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view of neighboring property, dwelling units and streets.

J. **Utility and Service Lines.** No gas, electric, power, telephone, water, sewer, cable television or other utility or surface lines of any nature or kind, shall be placed, allowed or maintained upon or above the ground on any lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit surface pedestals and other ground switch cabinets and transformers where required.

K. **Burning and Incinerators.** No open fire shall be permitted on any lot at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon any lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

L. **Signs and Mailboxes.** No exterior signs or advertisements of any kind may be placed, allowed or maintained on any lot without prior approval and authorization of the Declarants, except that residential name plates, "For Sale" signs, and signs designating the Contractor of the dwelling unit upon such lot may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size as may be adopted by the Declarants. All mailboxes shall satisfy such specifications and location as may be prescribed by the design guideline as established by the Architectural Committee. If a central mailbox is installed by Declarants for the subdivision, individual mailboxes shall be forbidden.

M. **Repairs.** No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles shall be made upon any portion of any lot within the view of neighboring property, dwelling units and streets, without the prior written approval and authorization of the Declarants.

N. **Oil, Gas and Mineral Activity.** no oil or gas exploration, drilling, development or refining operations, and no quarrying or mining operation of any kind, including oil wells, surface tanks, tunnels or mineral excavations or shafts shall be permitted or pursued by any Owner upon or under any lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

O. **Septic Tanks and Sewage Disposal.** No outside toilets of any kind are permitted except during the period of construction of a dwelling unit during which time chemically treated outside toilets may be maintained in a manner subject to Declarants approval; and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or unsanitary sewage being carried into any body of water or water source.

Covenants, Conditions, Assessments, Charges, Servitude, Liens, Reservations and Easements for 168.86 acres.

P. **Water Wells.** At no time shall the drilling, usage or operation of any water well be permitted on any lot without authorization of Declarants.

Q. **Fire Arms and Weapons.** No lot or any other portion of the property shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun or any other firearm, or any bow and arrow, or any other device capable of killing or injuring.

R. **Motor Vehicles.** The operation of any and all motorized vehicles within the property shall be subject to such rules and regulations as shall from time to time be established by the Declarants.

S. **Change in Intended Use.** No portion of the property shall be developed or redeveloped otherwise than in accordance with its original intended use, without the prior written authorization of the Declarants.

T. **Misuse and Mismanagement.** No lot shall be maintained or utilized in such manner as to present an unsightly appearance (including but not limited to clothes drying within public view) or constitute a nuisance or unreasonable annoyance or to endanger the health of other owners or residents of the property; and no obnoxious or otherwise offensive condition or activity shall be allowed to exist or be conducted thereon.

U. **Violation of Statutes, Ordinances and Regulations.** No lot shall be maintained or utilized in such manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Texas, the City Of Tyler, the County of Smith, or any other governmental agency or subdivision having jurisdiction over the property.

V. **Violation of Covenants, Conditions or Restrictions.** No lot shall be maintained or utilized in violation of this Declaration or of the rules and regulations of the Declarants, or of any Covenants, Conditions or Restrictions applicable to and binding upon said lots.

**ARTICLE XV**

**Term; Amendments; Terminations**

15.01 **Term; Method of Termination.** This Declaration shall be effective upon the date of the recordation hereof and as amended from time to time and shall continue in full force and effect to and including December 31, 2021. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting seventy-five (75%) percent of the total votes (each Owner having one vote per lot owned), present at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period thereof or any ten (10) year extension.

15.02 **Amendments.** This Declaration may be amended or changed in whole or in part at any time by (i) the affirmative vote of fifty-one (51%) percent of the total votes (each Owner then having one vote per lot), present at a special meeting called, and (ii) the written approval of the Declarants.

Covenants, Conditions, Assessments, Charges, Servitude, Liens, Reservations and Easements for 168.88 acres.

**15.03 Right of Amendment.** If requested by a governmental agency or federal chartered lending institutions anything in this Article to the contrary notwithstanding, Declarants reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by any Federal, State or local agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or by any federally chartered lending institution as a condition precedent to lending funds upon the security of the property or any portion thereof. Any such amendment shall be effected by the recordation, by Declarants, of a Certificate of Amendment signed by a duly authorized agent of Declarants with signatures acknowledged, specifying the Federal, State or local governmental agency, or the federally chartered lending institution requesting the amendment and setting forth the mandatory language requested by such agency or institution. Recordation of such a certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such certificate, when recorded, shall be binding upon the property and all persons having an interest in the property. Except as provided in this Declaration, Declarants shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions hereof.

## ARTICLE XVI

### Miscellaneous

**16.01 Interpretation of Covenants.** Except for judicial construction, the Declarants shall have exclusive right to construe and interpret the provisions of this Declaration. In the absence of any judicial decision to the contrary by a Court of competent jurisdiction, the Declarants construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited and bound by the covenants and provisions hereof.

**16.02 Severability.** Any determination by any Court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.

**16.03 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

**16.04 Rules and Regulations.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarants shall have the right to adopt rules and regulations with respect to all other aspects of the Declarants rights, activities and duties provided said rules and regulations are not inconsistent with the provisions of this Declaration.

**16.05 Declarants Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded Plat or other instrument recorded in the Real Property Records of Smith County, Texas, Declarants makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the property can or will be carried out or that any land now owned or hereafter acquired by it is or will be subject to this Declaration, or that any such land is or will be committed to or developed for a particular purpose or use, or that if such land is once used for a particular use, such use will continue in effect.

16.06 Limitation of Liability. In the absence of gross negligence or gross misconduct attributable to Declarants or his successors or assigns, neither Declarants, nor his successors or assigns shall have any liability arising out of the performance or nonperformance of any of the rights and powers reserved unto Declarants, his successors or assigns, pursuant to this Declaration.

16.07 Successors and Assigns of Declarants. Any reference in this Declaration to Declarants shall include any successors or assigns of any of Declarants rights and powers hereunder.

16.08 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

16.09 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration is for the purpose of reference and convenience only, and is not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

16.10 Notices. Any notice required or permitted to be delivered as provided herein, shall be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, registered or certified mail, addressed to each such person at the address given by such person to the party sending the notice, or to the address of the dwelling unit of such person, if no address has been given. Such address may be changed from time to time by notice in writing.

16.11 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the property.

16.12 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the covenants, enforcement may be authorized by any proceeding at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provision; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof, may recover damages, including reasonable attorney's fees, if such person has sustained damages by reason of the violation of such provisions.

16.13 Suspension of the Covenants. The Declarants shall have the right during the period of construction, development and sale, to grant reasonable and specifically limited exemptions from the covenants to Declarants and any other developer or contractor. Any such exemption shall be granted only upon specific written request itemizing the exemption requested, the location thereof, and the need therefore, and the anticipated duration thereof; and any authorization and approval thereof shall be similarly itemized. No such exemption shall be broader in terms of activity, location or time than is reasonably required.

IN WITNESS WHEREOF, Declarants, have hereunto caused their names to be signed by the signature of their duly authorized official as of the date and year first above written.

Declarants:

TYLER STONEGATE DEVELOPMENT PARTNERS, LTD.

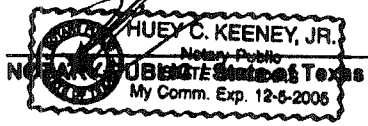
By: STONEGATE DEVELOPMENT COMPANY, LLC.  
General Partner

By: *[Signature]*  
JOSEPH Z. ORNELAS, Member

By: *[Signature]*  
MARK G. MAHAFFEY, Member

STATE OF TEXAS  
COUNTY OF SMITH

This instrument was acknowledged before me on the 8 day of April, 2002 by JOSEPH Z. ORNELAS, Member of STONEGATE DEVELOPMENT COMPANY, LLC, General Partner of TYLER STONEGATE DEVELOPMENT PARTNERS, LTD.



STATE OF TEXAS  
COUNTY OF SMITH

This instrument was acknowledged before me on the 8 day of April, 2002 by MARK G. MAHAFFEY, Member of STONEGATE DEVELOPMENT COMPANY, LLC, General Partner of TYLER STONEGATE DEVELOPMENT PARTNERS, LTD.



Return to:  
Huey Keeney  
912 First Place  
Tyler, TX 75702

Filed for Record in:  
SMITH COUNTY, TEXAS  
JUDY CARNES, COUNTY CLERK  
On Apr 15 2002  
At 11:58am  
Receipt #: 227952  
Recording: 39.00  
Doc/Num : 2002-88817414  
Doc/Type : REC  
Deputy -Georganna Vickers

Covenants, Conditions, Assessments, Charges, Servitude, Liens, Reservations and Easements for 168.86 acres.

STATE OF TEXAS COUNTY OF SMITH  
I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Official Public records of Smith County, Texas.



APR 15 2002

*Judy Carnes*  
JUDY CARNES  
COUNTY CLERK, Smith County, Texas