


This instrument prepared by:
Matthew S. Atkins
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203


20051207000634400 1/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

STATE OF ALABAMA)

SHELBY COUNTY)

POND DECLARATION

THIS POND DECLARATION (this "Declaration") is made as of the 29th day of November, 2005 by STONEGATE FARMS, LLC, an Alabama limited liability company ("Stonegate").

R E C I T A L S:

WHEREAS, pursuant to, inter alia, that certain subdivision plat recorded in the Office of the Judge of Probate of Shelby County, Alabama at Map Book 33, Page 122 (the "Plat"), Stonegate has subdivided certain real property in Shelby County, Alabama for the purpose of creating a residential development commonly known as Stonegate Farms (the "Subdivision").

WHEREAS, Stonegate holds fee title to Lots 69A and 69B (each a "Lot" and collectively, the "Lots"), as shown on that certain plat titled "A Resubdivision of Lot 69 Stonegate Realty Phase Three" being recorded in the Office of the Judge of Probate of Shelby County at Map Book 36, Page 13.

WHEREAS, Stonegate desires to flood a portion of such Lots for the purpose of creating thereon a pond, pursuant and subject to the terms as set forth in this Declaration.

NOW, THEREFORE, Stonegate does hereby declare that each of the Lots shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in either Lot and their respective heirs, executors, administrators, personal representatives, successors and assigns (respectively an "Owner" and collectively the "Owners").

ARTICLE 1.

DEFINITIONS

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 Engineer. The term "Engineer" shall mean and refer to Carr & Associates Engineers, Inc., together with any replacement or successor engineer engaged by Stonegate in connection with the construction of the Pond.

1.2 Guest. The term "Guests" shall mean and refer to any natural persons entering onto any portion of a Lot at the request or invitation of any Owner or Occupant. Guests shall include, without limitation, any and all relatives and all agents, employees, servants or independent contractors of any Owners or Occupants. All actions or omissions of any Guests of an Owner or Occupant are and shall be deemed the actions and omissions of the Owner or such Lot.

1.3 Mortgage. The term "Mortgage", with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office of Shelby County, Alabama.

1.4 Mortgagee. The term "Mortgagee", with an initial capital letter, shall mean and refer to the holder of any Mortgage.

1.5 Occupant. The term "Occupant" shall mean and include any natural person who occupies, resides or lives in a dwelling now or hereafter located on a Lot, whether such natural person constitutes the Owner of such Dwelling or the Guest of an Owner or Occupant and shall include all tenants, lessees, agents, servants, employees, independent contractors, invitees and any other natural persons who occupy, reside or live in any such dwelling. All actions or omissions of any Occupant are and shall be deemed the actions and omissions of the Owner of such Lot.


1.6 Owner. The term "Owner", with an initial capital letter, shall mean and refer to the record owner of fee simple title to any Lot, whether a corporation, partnership, limited liability company, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

1.7 Pond. The term "Pond" shall mean the pond with an initial pool elevation of up to 749 feet (measured on the basis of mean sea level elevation) to be constructed by Stonegate on the Lots in accordance with the terms and provisions of Section 3.1 below to be located generally as depicted on the drawing attached hereto as Exhibit A.

1.8 Pond Property. The term "Pond Property" shall mean and refer to that portion of the Lots that make up the Pond, together with all dams, spillways, pipes, lines, conduit, drainage swales, equipment, machinery, fixtures, appurtenances and other improvements of any nature situated in or upon the Lots as and when the Pond is constructed pursuant to the terms hereof. Further, the Pond Property shall include a strip of land five (5) feet in width along that portion of the Property lying parallel to, along and abutting the Pond.

ARTICLE 2.

GENERAL DECLARATION OF USE


20051207000634400 3/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

2.1 General Declaration. Stonegate hereby declares that the Lots are and shall be subject to the easements, covenants, conditions, restrictions, charges and regulations of this Declaration, and the Lots or, any part thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges and regulations shall run with the title to the Lots and shall be binding upon and inure to the benefit of the Owners of the Lots.

2.2 Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of either Lot and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.3 Tax Assessments. So much of the Pond Property as exists as a part of any Lot shall, for ad valorem tax purposes, remain a part of such Lot as assessed by the appropriate taxing authority. In the event that the Pond Property is separately assessed from the Lots, then the Owners, at the Owners' expense (to be divided equally among the Owners, or on such other basis as the Owners may agree among themselves), shall be responsible for the payment of all ad valorem taxes on the Pond Property.

ARTICLE 3.

POND CONSTRUCTION AND EASEMENTS

3.1 Construction of Pond.

(a) Subject to matters of "force majeure," Stonegate shall grade, excavate, grub, construct and install the Pond on the Pond Property. The Pond shall, when constructed, utilize earthen dams which shall be constructed in accordance with plans and specifications to be prepared by the Engineer and in accordance with all applicable governmental rules, regulations and requirements.

For purposes of this Section 3.1(a), the term "force majeure" shall mean acts of God or any public enemy, inclement weather, strikes, work slowdowns or stoppages, or other labor disputes, insurrections, riots or other civil disturbances, orders, rules, requirements, regulations, statutes, ordinances, laws, decrees or rulings of any federal, state, county or local governmental agencies or any political subdivisions or officials thereof, orders of any civil or military authority, partial or entire failure of public utilities, or any other condition of the

property, including geologic conditions that would prohibit the intended construction, or event beyond the reasonable control of Stonegate.

(b) Upon the completion of the Pond and the acceptance of a deed for a Lot, the Owners shall be deemed to have accepted and assumed all obligations to maintain, operate, repair and replace the Pond and the Pond Property, and each Owner and all Occupants and Guests shall be entitled to use the Pond subject to the terms hereof and any subsequent rules and regulations promulgated by the Owners by their mutual agreement.

3.2 Grant of Non-Exclusive Easements to Owners. Subject to the terms and provisions of this Declaration, Stonegate does hereby establish and grant for the benefit of each of the Owners and their respective heirs, executors, successors and assigns, the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Pond Property. The easement and rights granted pursuant to this Section 3.2 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, shall pass and run with title to each Lot and may not be severed, transferred, assigned, pledged, encumbered or otherwise alienated separate or apart from a Lot.

3.3 Grant of Maintenance Easements.

(a) Stonegate does hereby establish and grant for the benefit of each of the Owners and their respective heirs, executors, successors and assigns, forever, a permanent, perpetual and non-exclusive right and easement to enter upon any of the Pond Property for the purpose of maintaining, repairing, operating, replacing and relocating any dams, spillways, pipes, lines, conduit, drainage swales, equipment, machinery, fixtures, appurtenances of other improvements situated thereon.


(b) Stonegate does hereby establish and grant for the benefit of each of the Owners and their respective heirs, executors, successors and assigns, forever, a permanent, perpetual and non-exclusive easement over, across, through, upon and along the Pond Property for the purposes of mowing, cutting, removing, cleaning and pruning underbrush, trees, weeds, stumps and other unsightly growth therefrom and removing trash and other debris therefrom so as to maintain reasonable standards of health, safety and appearance on and about the Pond Property.

3.4 Establishment of Flood Easements. Stonegate does hereby establish and grant for the benefit of each of the Owners and their respective heirs, executors, successors and assigns, forever, a permanent, perpetual and non-exclusive right and easement over, across, through, under and upon that portion of each Lot within the Property lying at an elevation (measured on the basis of mean sea level) of 749 feet or less to be utilized for the flow and drainage of surface water accumulating in, upon or as a result of the construction and maintenance of the Pond on the Lots, which easement shall include the right to flood that portion of any Lot which is situated at an elevation of 749 feet or less (measured on the basis of mean sea level).

ARTICLE 4.

LIABILITY INSURANCE

Each Owner shall maintain general liability insurance coverage for his respective Lot with umbrella coverage in an amount of at least \$1,000,000.00.


20051207000634400 4/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

ARTICLE 5.

POND MAINTENANCE RESPONSIBILITIES

5.1 Responsibilities. The Owners shall maintain and keep in good repair and condition all portions of the Pond Property. Each Owner shall not be liable to the other Owner for injuries or damage to any person or property (1) caused by the elements, acts of God or any other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Pond Property caused by rain or other surface water which may leak or flow from any portion of the Pond Property onto a Lot, or (3) use of the Pond by either Owner or his respective Occupants or Guests.

5.2 Release of Liability. EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT AND EACH MORTGAGEE, BY ACCEPTANCE OF A MORTGAGE ENCUMBERING ANY LOT OR DWELLING, FOR THEMSELVES AND THEIR RESPECTIVE HEIRS, EXECUTORS, SUCCESSORS AND ASSIGNS, DOES HEREBY FOREVER WAIVE AND RELEASE STONEGATE FROM AND AGAINST ANY AND ALL LIABILITY OF ANY NATURE ARISING OUT OF OR ON ACCOUNT OF LOSS, DAMAGE OR INJURY TO PERSON OR PROPERTY, INCLUDING DEATH, AS A RESULT OF (a) ANY ENTRY ONTO THE POND PROPERTY AND THE LOTS BY EACH OWNER, HIS HEIRS, EXECUTORS, SUCCESSORS AND ASSIGNS, INCLUDING ANY OCCUPANTS OR GUESTS, (b) THE EXERCISE OF ANY OF THE EASEMENTS AND RIGHTS GRANTED HEREIN AND (c) THE RISE AND FALL OF THE WATER LEVEL OF THE POND, INCLUDING, WITHOUT LIMITATION, THE FLOW OF WATER INTO AND OUT OF THE POND WHICH RESULTS IN OR CAUSES DAMAGE, BY FLOODING OR OTHERWISE, TO ANY IMPROVEMENTS OR ANY PERSONAL PROPERTY SITUATED ON ANY PORTION OF THE POND OR LOTS OR RESULTS IN OR CAUSES ANY IMPROVEMENTS TO BE UNUSABLE DUE TO HIGH OR LOW WATER LEVELS. EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT, AND EACH MORTGAGEE, BY ACCEPTANCE OF A MORTGAGE ENCUMBERING ANY PORTION OF A LOT, FOR THEMSELVES, THEIR HEIRS, EXECUTORS, SUCCESSORS AND ASSIGNS, DOES HEREBY ACKNOWLEDGE AND AGREE THAT WHEN THE POND IS CONSTRUCTED, THEN (i) STONEGATE SHALL NOT, AND SHALL HAVE NO OBLIGATION TO, PROVIDE ANY LIFEGUARD OR OTHER SUPERVISORY PERSONNEL OR ASSISTANCE IN CONNECTION WITH THE CONDUCT OF ANY ACTIVITIES ON OR ABOUT THE POND PROPERTY, (ii) THE USE OF THE POND PROPERTY BY ANY OWNER, HIS AGENTS, EMPLOYEES, INVITEES, LICENSEES, SUCCESSORS AND ASSIGNS, INCLUDING ANY OCCUPANT OR GUEST, SHALL BE AT THE SOLE RISK AND EXPENSE OF THE PERSON OR ENTITY ENTERING ONTO AND USING THE LOTS AND POND PROPERTY AND (iii) STONEGATE SHALL NOT BE OBLIGATED TO TAKE ANY ACTION WHICH WOULD MAINTAIN A SPECIFIC WATER LEVEL FOR THE POND OR, AFTER CONSTRUCTION OF THE POND IS COMPLETE, ANY OTHER ACTION OF ANY KIND WITH RESPECT TO THE POND OR THE POND PROPERTY.

ARTICLE 6.

COSTS FOR POND MAINTENANCE

6.1 General. All expenses for the maintenance of the Pond as described in this Declaration shall be paid jointly, in equal shares, by the Owners. Should any such Owner (the "Defaulting Owner") fail or refuse to pay said Owner's share of such expense, then the other Owner (the "Nondefaulting Owner") shall have the right to pay the Defaulting Owner's share and shall be entitled to recover from the Defaulting Owner said share of the expense, together with attorney's fees and other costs of enforcing the provisions of this Article 6.

6.2 Fault of One Owner. Notwithstanding anything in this Declaration to the contrary, in the event that any damage to any part of the Pond Property or pollution thereof is caused solely by an Owner or his Occupants or Guests, then such Owner, at his sole cost and expense, shall promptly repair or cause to be taken action as is necessary and adequate to repair such damage or remediate such pollution, as the case may be. Should an Owner fail or refuse to comply with the obligations described in this Section 6.2, then he shall be deemed a Defaulting Owner, and the Nondefaulting Owner shall have the remedies prescribed in Section 6.1 above.

ARTICLE 7.

CASUALTY AND CONDEMNATION

7.1 Damage or Destruction to Pond Property.

(a) In the event of any damage or destruction to any of the Pond Property by fire or other casualty, then, subject to the terms and provisions of this Section 7.1 and Section 6.2 above, the Owners jointly shall promptly repair, replace and restore the damaged portions of the Pond Property to the condition to which they existed immediately prior to such casualty.

(b) In the event that (i) the obligation to repair, replace and restore pursuant to Section 7.1(a) is joint as between the Owners, (ii) the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Pond Property, and (iii) such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then each Owner shall contribute one-half (1/2) of the amount necessary to pay the remaining costs necessary to repair, replace or restore the Pond Property to the condition as existed immediately prior to such fire or other casualty.

7.2 Condemnation of Lots. In the event of the taking of all or any portion of any of the Pond Property as a result of, in lieu of, or in anticipation of the exercise of, the right of eminent domain, condemnation or by private purchase in lieu thereof, then this Declaration shall cease and be void and of no further force and effect.

ARTICLE 8.

POND RESTRICTIONS

8.1 Pond Restrictions. In addition to the covenants, conditions, restrictions, rules and regulations set forth in this Declaration, all of which shall be binding on each Lot, the following restrictions shall be applicable to the Pond Property:

(a) In no event shall the Pond be used for commercial purposes or used in any manner which is a nuisance.



20051207000634400 6/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

(b) In addition to any approvals required under the CCRs , as hereinafter defined, the design of any pier or dock within or along the Pond Property must be approved in writing by both Owners and must be built, maintained or replaced as approved, unless removed altogether.

(c) No sewer or drainage lines shall be constructed or laid which shall empty into or become a nuisance to the Pond.

(d) Strict attention shall be paid to keeping the Pond Property clean. Bottles, cans, paper products, Styrofoam, and other trash items must be controlled and not allowed to blow or collect on the Pond Property.

(e) Only canoes, row boats, and other manually powered watercraft shall be allowed on the Pond. No boats or watercraft in excess of 14 feet in length and no gasoline (or diesel) powered watercraft including, without limitation, jet skis, shall be allowed on the Pond. No swimming, water skiing or similar activities shall be conducted on or in the Pond.

(f) Fishing shall be permitted on or in the Pond.

(g) Drainage flow into the Pond from any Lot or Dwelling shall not be obstructed or diverted or rerouted outside of the natural drainage swales existing on any portion of such Lot.

ARTICLE 9.

AMENDMENTS

Subject to the immediately following sentence, amendments to this Declaration may be proposed and adopted only by the unanimous vote of both Owners. Notwithstanding the foregoing, so long as Stonegate owns either Lot, then Stonegate reserves the right to amend this Declaration without the consent of the other Owner.


ARTICLE 10.

MISCELLANEOUS PROVISIONS

10.1 Subdivision. Neither Lot may be further subdivided by an Owner without the written consent of the other Owner.

10.2 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

10.3 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.


20051207000634400 7/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

10.4 Pronouns and Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

10.5 Binding Effect. The terms and provisions of this Declaration shall be binding upon each Owner and Mortgagee and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner and Mortgagee, and shall inure to the benefit of Stonegate, and any or all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

10.6 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

10.7 No Reverter. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Stonegate nor shall any provision be deemed to vest any reversionary interest in Stonegate.

10.8 Interpretation. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

10.9 Rights of Third Parties. This Declaration shall be recorded for the benefit of Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party (including, without limitation, any party claiming through the CCRs, as such term is defined hereinbelow) shall have any right, title or interest hereunder.

10.10 No Trespass. Whenever any party hereto or their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot, the entering thereon and the taking of such action shall not be deemed a trespass.

10.11 Oral Statements. Oral statements or representations by Stonegate, or any of its respective employees, agents, representatives, successors or assigns, shall not be binding on Stonegate.


10.12 Further Assurances. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Stonegate or the other Owner for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

10.13 No Waiver. All rights, remedies and privileges granted to an Owner pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such

party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

10.14 Stonegate Farms. Nothing contained herein shall affect the rights and obligations of each Owner (including, without limitation, the obligation of each such Owner to pay assessments) as described in those certain Stonegate Farms Amended and Restated Covenants, Conditions and Restrictions affecting the Subdivision, the same being dated February 21, 2001 and recorded on April 2, 2001 at Inst #2001-12016 in the Office of the Judge of Shelby County, Alabama (the "CCRs"). Further, the Pond and the Pond Property shall not be deemed a "Common Area" or "Lake" as such terms are defined in the CCRs, and neither Lot (as defined in this Declaration) shall be deemed a "Lake Lot" as defined in the CCRs because of the construction of the Pond.


10.15 Plat. Notwithstanding any note or other statement on the Plat to the contrary, Stonegate hereby declares and clarifies that the maintenance responsibility for the Pond and the Pond Property shall be as described in this Declaration. No such maintenance responsibility shall be borne by Stonegate (except for such period that Stonegate is an Owner of a Lot, as defined herein), any other property owners within the Subdivision or the Association (as defined in the CCRs).


20051207000634400 9/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

IN WITNESS WHEREOF, Stonegate has caused this Declaration to be duly executed as of the day and year first above written.

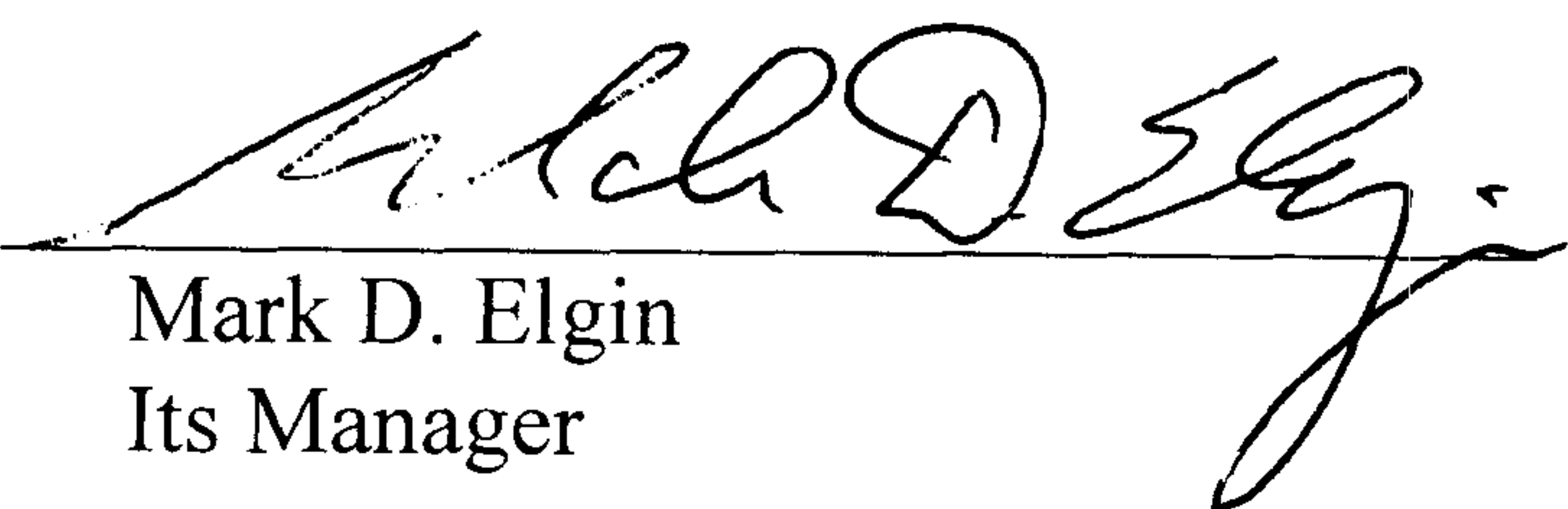
STONEGATE FARMS:

Stonegate Farms, LLC,
an Alabama limited liability company


20051207000634400 10/10 \$38.00
Shelby Cnty Judge of Probate, AL
12/07/2005 02:01:50PM FILED/CERT

By: Stonegate Projects (Alabama), LLC,
an Alabama limited liability company,
Its Manager

By: Stonegate Realty Company, LLC,
an Oklahoma limited liability company,
Its Manager

By: 
Mark D. Elgin
Its Manager

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Mark D. Elgin, whose name as Manager of Stonegate Realty Company, an Oklahoma limited liability company, which is the Manager of Stonegate Projects (Alabama), LLC, an Alabama limited liability company, which is the Manager of Stonegate Farms, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 24th day of NOVEMBER, 2005.


Notary Public

[NOTARIAL SEAL]

My commission expires: 8/12/09