

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

For

6467

HERITAGE HILLS TOWNHOMES

THE STATE OF TEXAS:

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WASHINGTON:

WESTFIELD BUILDERS, L.L.C., (hereinafter collectively called "*Declarant*"), are the owners in fee simple of a parcel of land, such parcel of land consisting of twelve (12) lots being described as follows:

Heritage Hills Townhomes, a subdivision of 1.892 acres of land situated in the City of Brenham, Washington County, Texas, out of the M. N. Combs Survey Abstract No. 124, as more fully shown, on plat recorded in Plat Cabinet File No. 556A Plat Records of Washington County Texas.

Being the same property described in Deed dated December 8, 2006 executed by Stone Mansion, Inc., a Texas Corporation, acting by and through its President, Wayne B. Hawkins, to Westfield Builders, L.L.C., recorded in Volume 1227, Page 760, Official Records of Washington County, Texas

For the purposes of enhancing and protecting the value, attractiveness and desirability of the Subdivision, Declarant hereby declares that the Subdivision and each part thereof shall be held, sold and conveyed only subject to the following easements, covenants, conditions, and restrictions which shall constitute covenants running with the land and shall be binding on all parties having any right, title or interest in the Subdivision, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "*Association*" shall mean and refer to HERITAGE HILLS TOWNHOMES ASSOCIATION, INC., a Nonprofit Corporation, its successors and assigns.

Section 2. "*Declarant*" shall mean WESTFIELD BUILDERS, L.L.C.

Section 3. "*Unit*" shall mean and refer to the improvements constructed on a Lot (as that term is herein defined) designated or intended for independent use as a single family residence and adjacent carport which has a direct or indirect exit to a public street or way, together with an undivided 8.33333 percent each in the Common Elements.

Section 4. "*Common Elements*" shall mean and refer to each and every portion of the Subdivision shown as open space, accessway(s), streets, common driveways, or thoroughfares, all as shown on the recorded plat of the Subdivision, but shall not include any portion of the lots except for designated easements indicated on the plat.

Section 5. "Lot" shall mean the twelve (12) lots located within the Subdivision.

Section 6. "Property" means and includes all the Lots, the Units, the Common Elements, and all easements, rights and appurtenances belonging thereto, comprising the Subdivision.

Section 7. "Maintenance" shall mean the exercise of reasonable care to keep the Units, driveways, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

Section 8. "Member" shall mean every person or entity that holds membership in the Association.

Section 9. "Mortgage" shall mean a mortgage or Deed of Trust.

Section 10. "Mortgagee" shall mean a holder of a mortgage or a beneficiary under or holder of a Deed of Trust.

Section 11. "Owner" shall mean the record owner, whether one or more persons or entities of a fee simple title to any Lot but shall not include those holding title merely as security for performance of an obligation.

ARTICLE II **MEMBERSHIP IN ASSOCIATION, VOTING RIGHTS**

Section 1. Every Owner of a Lot shall be a Member of the Association; membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. The Association shall have two classes of voting Members as follows:

Class A: The Class A Members shall be all Owners with the exception of WESTFIELD BUILDERS, L.L.C., and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a given Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to each Lot owned by Class A Members.

Class B: The Class B Member shall be WESTFIELD BUILDERS, L.L.C., who shall be entitled to exercise three votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership upon the occurrence of any of the following events, whichever occurs first: (i) when the total number of votes entitled to be cast by the Class A Members, with respect to the Subdivision, at any meeting of the Members or otherwise, equals the total number of votes entitled to be the Class B Member, with respect to the Subdivision; (ii) ten (10) years from the date this Declaration is filed in the Real Property Records of Washington County, Texas; or (iii) at such earlier time as the Class B Member, in its sole discretion, shall elect.

Section 3. If title to a Lot shall be in the name of two (2) or more Owners, anyone of such Owners may vote as the Owner of the Lot at any meeting of the Association and such vote shall be binding on such other Owners who are not present at such meeting until written notice to the contrary has been received by the Association in which case the unanimous action of all such owners (in person or by proxy) shall be required to cause the one vote of such Lot.

Section 4. The vote of each Owner may only be cast by such Owner or by a proxy given by such Owner to his duly authorized representative.

ARTICLE III POWERS, DUTIES, RESPONSIBILITIES OF ASSOCIATION

The Association shall have the powers, duties, and responsibilities provided by this Declaration of Covenants, Conditions and Restrictions including, but not limited to the following:

- (i) to make and enforce rules and regulations covering the operation and maintenance of the Property;
- (ii) to engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay said persons a reasonable compensation therefor;
- (iii) to operate, maintain, repair, improve and replace the Common Elements and facilities;
- (iv) to determine and pay the common expenses, including but not limited to (i) the water charges attributable to the Common Elements of the Subdivision; (ii) property taxes on the Common Elements; (iii) insurance (including casualty and liability) attributable to the Common Elements; (iv) any other expenses necessary to operate, maintain, repair, improve and replace the Common Elements;
- (v) to assess and collect the proportionate share of common expenses and expenses attributable to a specific Lot from the Lot Owners;
- (vi) to open bank accounts on behalf of the Association and to designate the signatures therefor;
- (vii) to bring, prosecute and settle litigation for the Association and the Property, provided that no settlement shall be made which results in liability against the Association or the Property without prior approval of the majority of the Lot Owners;
- (viii) to obtain, fire, casualty and liability insurance on the Property or any portion thereof in the name of the Association, at the option of the Association; or upon Lot Owner's default in providing insurance as required by the Declaration to obtain the required insurance in the name of the Lot Owner and assess the expense of procuring such insurance to Owner and to such Owner's respective Lot;
- (ix) upon an Owner's default in the obligation to repair and rebuild, at the option of the Association, the Association may repair or restore (at Lot Owner's expense), the Unit or any portion thereof following damage or destruction thereof;

- (x) to do such other acts necessary for the operation and maintenance of the Property, including the maintenance and repair of any improvements located on a Lot if the same is necessary to protect or preserve the Property; and
- (xi) all other powers, duties and responsibilities as set forth in the By-Laws of the Association, as amended from time to time.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment

Every Owner of a Lot shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to such Lot.

Section 2. Easements of Encroachments

Each Lot, and the property included in the Common Elements, shall be subject to an easement for encroachments created by construction, settling and overhang of the individual Units. There shall exist reciprocal appurtenant easements as between adjacent Lots, and between each Unit and any portion or portions of the area adjacent thereto for any encroachment due to the unwillful placement, settling or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this Declaration. No easement or encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner.

Section 3. Other Easements

(a) No structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction or flow of drainage utilities. The easement area of each Lot and all improvements therein shall be continuously maintained by the Owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible.

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

(c) Parking of vehicles on any street, driveway or thoroughfare located within the Subdivision shall be restricted to the Owners and their invitees and only in designated areas provided, however, in no event shall a vehicle ever be parked in such a manner which will block ingress or egress to or from any part of the Subdivision.

Section 4. Right of Entry

The Association, through its duly authorized employees and contractors, shall have the right after reasonable notice to the Owner thereof to enter any Unit at any reasonable hour on any day to perform such maintenance as may be authorized herein.

**ARTICLE V
ASSESSMENTS**

The making and collection of assessments from Lot Owners for their share of common expenses shall be established by the Association and subject to the following provisions:

Section 1. Each Owner shall be liable for:

(a) an undivided percentage of the common expenses which is equal to the undivided percentage of the Common Elements owned by such Owner (including; but not limited to (i) special assessments for capital improvements; (ii) monthly common maintenance charges; (iii) property tax assessments for all real property taxes on the Common Elements; (iv) insurance charges attributable to the Common Elements), and

(b) any other expenses payable by the Association attributable to the Owner's specific Lot or Unit.

Section 2. All assessments shall be paid annually, and the amount of the assessment to each lot Owner shall be \$840.00, per year or \$70.00 per month beginning January 1, 2008. The amount of the assessment shall be established by the Board of Directors of the Association; provided, however that any increase may not exceed an amount equal to the amount necessary to cover any increases in property tax assessments for all real property taxes on the Common Elements, plus ten percent (10%) of the prior years, monthly assessment. The maximum assessments, as provided above, may be increased above the maximum by a vote of 2/3 of the Lot Owners. Assessments and any installments thereof not paid on or before ten (10) days after the date when due, shall bear interest at the rate of ten percent (10%) per annum, or at such lawful rate of interest as may be set by the Association, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

Section 3. In addition to the annual maintenance assessments authorized herein, the Association may levy a special assessment, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement located on any of the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of 2/3 of the votes of each class of members who are voting.

Section 4. Subject and subordinate only to the first lien Mortgage on each lot, a continuing Vendor's Lien upon each Lot is hereby retained to secure the payment such assessments and obligations hereunder, and each Lot is impressed with such lien against it to secure the payment of all assessments and obligations hereunder, which lien shall also secure the payment of reasonable attorney's fees, costs and expenses, including taxes incurred by the Association or any person incident to the collection of unpaid assessment or other charges. Each Owner of a Lot, by acceptance of a deed or other conveyance therefore, whether or not it is so stated or expressed in such deed or other conveyance, shall be deemed to covenant and agree to such lien.

Section 5. Subject to the rights of any Mortgagee, if any action for the foreclosure of a lien

rental for the Unit, and the Association shall be entitled to the appointment of a receiver to collect the same.

Section 6. Subject to the rights of any Mortgagee, if the Unit Owner shall, at any time, let or sublet his Unit and shall default for a period of one (1) month in the payment of ASSESSMENTS, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner the rent due or becoming due in the payment of such rent to, the Association shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.

Section 7. Any assessment lien created or claimed under the provisions of this Declaration shall be subject and subordinate only to the rights of any first lien Mortgagee of any duly recorded first lien Mortgage upon one of more Lots made in good faith and for value. No Lien created under the provisions of said Declaration shall in any way defeat, invalidate or impair the rights of any first lien Mortgagee under any such duly recorded first lien Mortgage unless such Mortgagee shall expressly subordinate its interest, to such lien.

ARTICLE VI USE RESTRICTIONS

All Lots and the improvements thereon shall be occupied and used only as follows:

Section 1. For residential purposes only.

Section 2. An Owner may lease the owned Unit for any term as long as such lease is for single family residential purposes only. All leases shall be written on forms approved by the Association.

Section 3. No business of any kind shall be conducted on any Lot with the exception of the business of Declarant, in the sale of all of the Lots.

Section 4. No obnoxious or offensive activity shall be carried on, in or about any Lot with the exception of the business of Declarant in selling all of the Lots.

Section 5. No sign of any kind shall be displayed to public view on a Lot without the prior written consent of the Association, except customary (i) name and address signs, and (ii) signs for the sale or rental of a Lot with the exception of the business of Declarant, in the sale of all of the Lots.

Section 6. Nothing shall be done or kept on a Lot which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his property which would result in the cancellation of insurance on any improvements located on a Lot or which would be in violation of any law.

Section 7. The Common Elements shall not be used for storage of supplies, personal property, trash of any kind except common sanitary trash receptacles located in appropriate areas concealed from public view as designated by the Association and on day of trash pick-up as required by the City of Brenham. Nor shall the Common Elements be used in any way for drying, shaking or airing of clothing or other fabrics. Entrance, sidewalks, yards, driveways and parking areas shall not be obstructed in any way nor shall unauthorized persons or pets play

therein or thereon or use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either of the owned Lot or upon the Common Elements which despoils the appearance of the Property.

Section 8. Except as specifically provided herein, no animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or within a Unit. No more than two (2) dogs, cats, or other household pets may be kept in a Unit subject, or upon a Lot, if the Lot is fenced, subject to the rules and regulations as may be adopted by the Association. No pet may be permitted to run loose upon the Common Elements, and any Owner who causes any animal to be brought or kept upon any part of the Property shall indemnify and hold harmless the Association for any loss, damage, or liability which the Association may sustain as a result of the presence of such animal on the Property, whether or not the Association has given its permission therefor. Two-thirds of the Owners of the Lots shall have the right to modify this section at any time, and all Owners will recognize and abide by this section as may be modified from time to time.

Section 9. No Owner shall make structural alterations or modifications to the Owned Unit or to any of the Common Elements without the written approval of the Association. The Association shall not approve of any alterations, decorations or modifications which would jeopardize the soundness, safety and appearance of the Subdivision.

Section 10. No fence, hedge, wall or other dividing instrumentality in excess of six feet (6') in height shall be constructed on any Lot except with the written consent of the Association.

Section 11. Doors of any other storage room or gates shall be maintained in a closed position whenever possible.

Section 12. No outside television or radio aerial or antenna or other aerial or antenna or similar device, for reception or transmission, shall be maintained upon in a Unit or Lot without the prior written consent of the Association.

Section 13. No part of any Unit and its adjacent area shall be permitted to fall into disrepair and the Unit shall be maintained in good condition and repair.

Section 14. No vehicle or other object belonging to or under the control of an Owner or member of the family or a guest, tenant, lessee, or employee of any Owner shall be parked in such manner as to impede or prevent ready access to any entrance to or exist from any Lot or Unit or on any access easement.

Section 15. Vehicles not in operating condition shall not be parked upon the premises of the Property. No parking space shall be converted for living, recreational or business purposes nor shall anything be stored in any parking space as to prevent the parking of a vehicle therein.

Section 16. Owners and occupants shall exercise reasonable care to avoid making or permitting to be made, loud, disturbing or objectionable noises, and in using or playing or permitting to be used or played musical instruments, radios, phonographs, televisions, amplifiers, and any other instruments or devices in such a manner as may disturb or tend to disturb occupants of other Units, and the same shall not be played or permitted to be played between the hours of 10:30 P.M. and the following 8:00 A.M. if the same shall disturb or tend to disturb the other Unit occupants.

ARTICLE VII OWNER'S OBLIGATIONS TO REPAIR

Section 1. Each Owner shall, at his sole cost and expense, repair his Unit, keeping the same in a condition comparable to the condition of such Unit at the time of its initial construction, excepting only normal wear and tear.

Section 2. If all or any portion of a Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair or reconstruct such Unit in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within one (1) month after the damage occurs, and shall be completed within six (6) months after the damage occurs unless prevented by causes beyond the control of the Owner or Owners.

Section 3. Each Owner shall be required to acquire and maintain in full force and effect a policy of fire and other casualty insurance in an amount acceptable to the Association, and with coverage adequate to cover the full replacement costs of any repair or reconstruction work on the Owner's Unit or Lot. The Association shall be named as an additional insured.

Section 4. The provisions pertaining to owner's obligations to make repairs shall not effect or impair the rights of any Mortgagee to receive all or any part of any insurance proceeds payable upon loss to a Unit, nor shall a Mortgagee, as a mortgagee or as an owner due to foreclosure, have any obligation to rebuild or repair a Unit.

ARTICLE VIII CONVEYANCES AND EASEMENTS

Section 1. Every deed, lease, mortgage or other instrument may describe a Lot by its number as reflected on the recorded plat of the Subdivision. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding undivided 8.33333 percent ownership in the Common Elements and facilities, as a tenant-in-common, even though the same is not expressly mentioned or described. No Owner shall have the right during the term hereof (including extensions) to seek a partitioning of the Common Elements and it is stipulated that the Common Elements are not partitionable in kind.

Section 2. Every deed, lease, mortgage or other similar instrument shall be deemed to:

- 2.1 Except and reserve with respect to a Lot: (i) any portion of the Common Elements and facilities lying within said Lot, appurtenant to the Common Elements and facilities lying within said Lot; (ii) easements through said Lot, appurtenant to the Common Elements and all other Lots, for support and repair of the Common Elements and facilities and all other Lots; and (iii) easements, appurtenant to the Common Elements and facilities, for encroachment upon the air space of said Lot by those portions of the Common Elements and facilities located within said Lot.
- 2.2 Include with respect to a Lot non-exclusive easements for ingress and support of said Lot through the Common Elements and facilities, for the repair of said Lot through all other Lots and through the Common Elements and facilities.

- 2.3 Except and reserve, with respect to the undivided percentage interest in the Common Elements and facilities, non-exclusive easements appurtenant to all Lots for ingress, egress, support and repair.
- 2.4 Include, with respect to the undivided percentage interest in the common areas and facilities, non-exclusive easements through each Lot for support and repair of the Common Elements and facilities and non-exclusive easements for encroachments upon the air space of all of the Lots by and for the portions of the Common Elements and facilities lying within the Lots.

ARTICLE IX

GENERAL PROVISIONS

Section 1. The Declaration of Covenants, Conditions and Restrictions shall be administered by the Association pursuant to the Articles of Incorporation, the Association Bylaws, and rules and regulations adopted by the Association.

Section 2. Enforcement:

Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereinafter imposed by the provisions of this Declaration. Failure by Declarant, the Association, or by any Owner to enforce any kind of a restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability:

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

Section 4. Amendments.

Covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by at least fifty (50%) percent of the authorized votes of Members. No amendment to this Declaration shall affect the rights of a Mortgagee of any prior first lien Mortgage which is made in good faith and for value; provided that any such Mortgage is recorded prior to the recordation of such amendment, provided further that the benefit of this paragraph shall not apply to the Mortgagee of any such Mortgage unless each Mortgagee shall either join in the execution of such amendment or shall approve said amendment in writing as a part of said amendment.

Section 5. Subordination.

No breach of any of the conditions herein contained or re-entry by reason of such breach shall defeat or render invalid the lien of any Mortgagee made in good faith and for value as to any Lot; provided, however, that such condition shall be binding on any Owner whose title is acquired by foreclosure, Trustee's Sale or otherwise.

Section 6. Duration.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of thirty-five (35) years from the date hereof. Thereafter they shall continue automatically in effect for additional periods of ten (10) years each, unless otherwise agreed to in writing by the then Owners of at least three quarters (3/4) of the Lots.

Section 8. Captions.


The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision thereof.


Section 9. Effective Date.

This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants, Conditions, and Restrictions for Heritage Hills Townhomes this 9 day of November, 2007.

WESTFIELD BUILDERS, L.L.C.

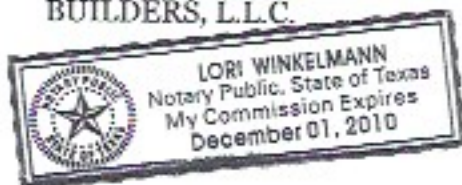

Anthony Caporina, Member



Gary Bollinger, Member

THE STATE OF TEXAS:

COUNTY OF WASHINGTON:

This instrument was acknowledged before me on the 9 day of November, 2007, by Anthony Caporina, Member of WESTFIELD BUILDERS, L.L.C.





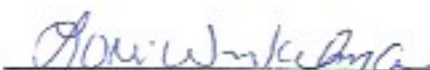
Notary Public in and for the State of TEXAS

THE STATE OF TEXAS:

COUNTY OF WASHINGTON:

This instrument was acknowledged before me on the 9 day of November, 2007, by Gary Bollinger, Member of WESTFIELD BUILDERS, L.L.C.





Notary Public in and for the State of TEXAS

CONSENT OF MORTGAGE

The undersigned BRENHAM NATIONAL BANK, being the owner and holder of a mortgage lien upon and against the land and property described as the real property in the foregoing Declaration of Covenants, Conditions and Restrictions for Heritage Hills Townhomes, as mortgagee and lien holder, does hereby consent to said Declaration, of Covenants, Conditions and Restrictions, and subordinates such mortgage lien to the said Declaration of Covenants, Conditions and Restrictions for Heritage Hills Townhomes as if the same had been recorded prior to the creation of such liens.

This consent shall not be construed to operate as a release of said mortgage or liens owned and held by the undersigned or any part thereof.

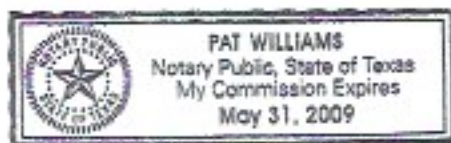
THE BRENHAM NATIONAL BANK

By: Michael Rudloff
 Printed Name Michael Rudloff
 Title Sr. Vice President

THE STATE OF TEXAS:

COUNTY OF WASHINGTON:

This instrument was acknowledged before me on the 13 day of November, 2007, by Michael Rudloff, Title of Officer) of THE BRENHAM NATIONAL BANK.



Pat Williams
 Notary Public in and for the State of TEXAS

STATE OF TEXAS
 COUNTY OF WASHINGTON

I hereby certify that this instrument was FILED on the date and at the time affixed hereon by me and was duly RECORDED in the volume and page of the OFFICIAL RECORDS of Washington County, Texas, as stamped hereon by me on

NOV 14 2007



Beth A. Rothermel
 Beth Rothermel, County Clerk
 Washington County, Texas

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