



**VARIANCE OF RESTRICTIONS AND COVENANT NOT TO ENFORCE**

**STATE OF TEXAS**

§

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF MONTGOMERY**

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**WHEREAS**, this Variance and Covenant Not to Enforce Agreement (the “Agreement”) is executed by and between **MATTHEW DRAKE CARMICHAEL** and wife, **ANDREA PERRY CARMICHAEL** (the “Carmichaels”) and **MONT.DEVCON I PROPERTY OWNERS ASSOCIATION** (the “Association”), to be effective on July 18, 2012; and

**WHEREAS**, the Carmichaels own that certain real property being commonly known as 22025 Stone Creek Lane, Montgomery, Texas 77316, and legally described as follows:

Lot 44, in Block 1, of **STONE CREEK, SECTION ONE (1)**, a subdivision in Montgomery County, Texas, according to the map or plat thereof recorded in Cabinet Z, Sheet 297-300, of the map and/or plat records of Montgomery County, Texas (the “Lot”); and

**WHEREAS**, the Carmichaels have requested permission to construct and install a twelve foot by twenty-four foot (12' x 24') shed/work building (the “Shed”) on the Lot prior to construction of the main residence to be located on the Lot; and

**WHEREAS**, the Declaration of Covenants, Conditions and Restrictions for Stone Creek, Section 1, a Subdivision in Montgomery County, Texas, which is recorded under Clerks File No. 2006-101719, of the Official Public Records of Real Property of Montgomery County, Texas (the “Restrictions”), provide certain covenants, conditions and restrictions which are applicable to the Lot; and

**WHEREAS**, the Restrictions provide that all lots shall be used for single family residential purposes only, and that no lot shall be used for the open storage of materials whatsoever, except for

new building materials used in construction of improvements erected on the lot (which may be placed upon such lot at the time the construction is commenced); and

**WHEREAS**, the Restrictions further provide that no structures of any temporary character, *including shacks, garages, barns, or other outbuildings* shall be placed or stored on any lot except as provided in the Restrictions, and the Restrictions further provide that permanent storage buildings may be constructed or placed on a lot with the prior written approval of the Architectural Review Committee (the "ARC"), but only if constructed of new material, and only if placed in the rear of the residence and hidden from view; and

**WHEREAS**, the Carmichaels have requested that the Association permit them to construct and install the Shed prior to the construction of the main residence on the Lot, which does not comply with the Restrictions, and have requested that the Association consider granting a variance to permit said construction and installation for a certain time period prior to the Carmichaels commencing construction of the main residential structure on their Lot; and

**WHEREAS**, the Association has the authority, pursuant to the Restrictions, to grant such variances when approved by the Board of Directors, upon recommendation by the ARC.

**NOW, THEREFORE**, for and in consideration of good and valuable consideration, including the mutual agreements set forth herein, the parties agree as follows:

1. The Association hereby permits the Carmichaels to immediately construct and install the Shed on the Lot, prior to commencement of the main residential structure on the Lot. The Shed shall not be plumbed and shall contain no water or sewer plumbing lines whatsoever, servicing the Shed. There shall not be any electricity servicing the Shed and the Shed, shall, under no circumstances, be used as a residence, permanently or temporarily. The Shed shall be maintained

in a good condition and of quality appearance, to the satisfaction of the Board of Directors of the Association.

2. The Shed shall be located on the Lot as set out in plat map or diagram in the attached Exhibit "A," which is incorporated herein by reference. The Shed shall be constructed or placed on the Lot and shall be constructed of new material, and shall be located in a place wherein when the main residence is constructed on the Lot, it will be in the rear of said main residence, or otherwise hidden from public view on the Lot, in accordance with the Restrictions.

3. The Carmichaels agree to commence construction of the main residential structure on their Lot within six (6) months from the date of this Agreement. In the event construction is not commenced within six (6) months from the date of this Agreement, the Carmichaels agree to immediately remove the Shed from the Lot. In the event the Carmichaels fail and/or refuse to remove the Shed from the Lot, as required by this Agreement, the Association, acting through its Board of Directors, may exercise self-help remedies in accordance with the Restrictions. Specifically, the Association may seek to enter the property and remove the Shed from the Lot, without liability to the Carmichaels for trespass or other damages. If the Association is required to remove the Shed from the Lot, the Carmichaels shall be charged the expenses and costs of such removal of the Shed and such amount shall be added to the Carmichaels' assessment account in accordance with the Restrictions.

4. In the event the Carmichaels do not keep the Shed in good repair and condition throughout the term of this Agreement, the Association shall have the right, in its sole discretion, to require the removal and/or repair of the Shed. In the event the Carmichaels do not repair or remove the Shed in accordance with the instructions from the Association, the Association may again exercise self-help remedies in accordance with the above-referenced paragraph.

5. So long as the Carmichaels are in compliance with the above and all terms of the Restrictions, the Association shall forebear pursuit of any remedies related to the Shed.

6. In the event the Carmichaels shall default in the performance of all or any of the Carmichaels' agreements set forth herein, the Association shall be entitled to immediately pursue any and all of its remedies at law or in equity, including civil damages and injunctive relief, and the Carmichaels shall be responsible for all attorney fees and costs incurred by the Association in connection with same. The remedies set forth in this paragraph are in addition to the self-help remedies set forth above.

7. The Carmichaels agree that this Agreement shall be performable by, and binding upon, the Carmichaels, and the Carmichaels' heirs, successors and assigns.

8. The Carmichaels agree that the Association has a right to record this agreement in the office of the County Clerk of Montgomery County, Texas.

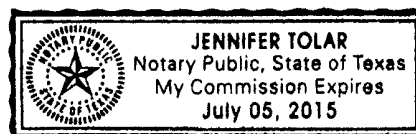
Executed by the parties hereto on the date of the acknowledgments set forth hereinbelow, to be effective on the date set forth first hereinbelow.

**MONT.DEVCON I PROPERTY OWNERS  
ASSOCIATION**

By: *Adolph Wischnewsky*  
ADOLPH WISCHNEWSKY, President

*Matthew Drake Carmichael*  
MATTHEW DRAKE CARMICHAEL

*Andrea Perry Carmichael*  
ANDREA PERRY CARMICHAEL

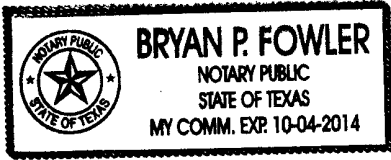


*Acknowledged before me on the 18<sup>th</sup> of July, 2012*  
*Jennifer Tolar*

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 19<sup>th</sup> day of July, 2012, by ADOLPH WISCHNEWSKY, President of **MONT.DEVCON I PROPERTY OWNERS ASSOCIATION**, a Texas non-profit corporation, on behalf of said corporation.



*[Handwritten Signature]*

NOTARY PUBLIC, State of Texas

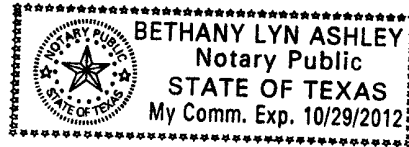
THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the 17<sup>th</sup> day of July, 2012, by **MATTHEW DRAKE CARMICHAEL** and wife, **ANDREA PERRY CARMICHAEL**.

*[Handwritten Signature]*

NOTARY PUBLIC, (State of Texas)



**AFTER RECORDING RETURN TO:**

Bryan P. Fowler  
The Fowler Law Firm  
300 West Davis, Suite 510  
Conroe, Texas 77301

**FILED FOR RECORD**

07/25/2012 10:10AM

*Mark Tumbull*

COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

**RECORDER'S MEMORANDUM:**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS

COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in file number sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Montgomery County, Texas.

**07/25/2012**



*Mark Tumbull*

County Clerk  
Montgomery County, Texas