

Sandy Hart, TRMC, MMC
City Secretary
City of McKinney
P.O. Box 517
McKinney, Texas 75069

FIRST MODIFICATION
to the
**SECOND AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF MCKINNEY, TEXAS
D.R. HORTON --- TEXAS, LTD.,
(individually and as transferee of
CUSTER WEST PARTNERS, L.P.),
BLUE STAR COIT 32, LLC
AND
206 MCKINNEY, LLC
FOR
THE WEST OF CUSTER PORTION
OF THE OVERALL PLANNED DEVELOPMENT
KNOWN AS STONEBRIDGE RANCH f/k/a
THE FLYING "M" RANCH PLANNED DEVELOPMENT**

WHEREAS, a Development Agreement was entered into effective February 1, 2000 by and between the City of McKinney, Texas, a Texas municipal corporation ("City"), and Custer West Partners, L.P., a Texas limited partnership ("CWP") providing for the City's recognition of Custer West as the assignee and successor-in-interest of Westerra Stonebridge, L.P. for the primary purpose of assuming the obligations under a 1986 Agreement to develop Stonebridge Ranch (the "**2000 Development Agreement**"); and

WHEREAS, CWP thereafter annexed additional land which was included in the development known as "West of Custer Property" under an agreement executed on April 21, 2005 entitled the "**2005 First Amended and Restated Development Agreement**" wherein all of the annexed additional land became subject to the same rights and obligations of the 1986 Agreement which CWP assumed in 2000; and

WHEREAS, CWP transferred certain land in Planning Areas 11A, 11B, 12, 14, and 15 in the development known as "West of Custer Property" to D.R. Horton --- Texas, Ltd. ("Horton") and Horton subsequently acquired Planning Area 16; and

WHEREAS, Blue Star Coit 32, LLC and 206 McKinney, LLC became parties to (and assumed certain rights and obligations of) the 2005 First Amended and Restated Development Agreement, incorporated the additional territory, modified the impact fee credits, and provided updated exhibits to be consistent therewith in an agreement executed

on October 28, 2011 entitled the “**2011 Second Amended and Restated Development Agreement (“the Second Agreement”)**”; and

WHEREAS, the City of McKinney, Texas, D.R. Horton --- Texas, Ltd., (individually and as transferee of Custer West Partners, L.P.), Blue Star Coit 32, LLC, and 206 McKinney, LLC now desire to modify, amend, and restate certain terms in the Second Agreement, to wit, Section III. Platting, Zoning, and Building Permits, and Section V. Public Improvements;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City of McKinney, Texas, D.R. Horton --- Texas, Ltd., (individually and as transferee of Custer West Partners, L.P.) Blue Star Coit 32, LLC, and 206 McKinney, LLC (collectively “the Parties”) do mutually contract, agree, and enter into this First Modification to the Second Amended and Restated Development Agreement as follows:

First Modification to the 2011 Second Amended and Restated Development Agreement

1. The Parties mutually contract and agree that pursuant to Section XI. Amendments, of the Second Agreement, the Parties agree to modify Sections III. Platting, Zoning, and Building Permits, and Section V. Public Improvements, of the Second Agreement, as stated below. It is the express intent of the Parties that only Sections III and V of the Second Agreement are being modified, and then only to the extent stated herein, and that all other provisions of the Second Agreement remain in full force and continuing effect in regard to all Parties.
2. Section III. Platting, Zoning, and Building of the Second Agreement is deleted and replaced for all purposes by the following new Section III. Platting, Zoning and Building:

III. Platting, Zoning, and Building Permits

- (a) All Property owned by the Developer and shown on Exhibit “A” to the Second Amended and Restated Development Agreement shall be platted, zoned, and developed in accordance with the Subdivision Ordinance No. 1290, the City’s Comprehensive Zoning Ordinance No. 1270, Zoning Ordinance No. 1621, applicable building codes and all other relevant ordinances as adopted by the City and as amended from time to time and including the approved development matrix for each Planning Area as depicted on Exhibit “A-1” to the Second Amended and Restated Development Agreement, except as may be otherwise set forth herein, before any Development Permit, Building Permit, or Certificate of Occupancy shall be issued.
- (b) Notwithstanding anything herein to the contrary, the Parties agree that, should all other requirements for City-issued Building Permits be met, Building Permits will be processed by the City for the specified subdivision phases and in the specified numbers:

<u>Subdivision</u>	<u>Phase</u>	<u>Number of Lots</u>
Valor Pointe at Westridge	12	93
Reserve at Westridge	6	88
Reserve at Westridge	7	up to 19

Building Permits for the Reserve at Westridge, Phase 7 are further subject to the City's acceptance of the plans for that subdivision and phase, and will not be processed prior to that acceptance. Additional Building Permits for the Reserve at Westridge, Phase 7 exceeding the number set forth above will not be processed until the segment of Virginia Parkway, depicted on Exhibit "D" to the Second Agreement, and Exhibit "1M-A" attached hereto and described in Section V.B.(2)(b) of the Second Agreement, has been completed and accepted by the City.

- (c) The Parties further agree that Building Permits for the 200 westernmost lots within Parcel 1501 and Parcel 1503 of Planning Area 15, and referenced in Sec. V.B.(2)(f) will not be processed by the City, notwithstanding the specific language of that section to the contrary, until all conditions established by Sec. V.B.(2)(f)(as modified by this Modification) are met and all roadways described in Sec. V.B.(2)(f)(as modified by this Modification) have been constructed and accepted by the City.

* * * * *

3. Section V. Public Improvements, of the Second Agreement is modified by this instrument as follows:

- (a) Notwithstanding anything to the contrary herein, or in the Second Amended and Restated Development Agreement, (including but not limited to the deadlines established in Section V.B.(2)(b) and (f)) the deadlines for construction of the following roadway segments shall be modified and established as follows and as shown on Exhibit "1M-A" attached hereto:

<u>Roadway</u>	<u>Phase</u>	<u>Completion Date</u>
Virginia Parkway	2	September 30, 2014
Virginia Parkway	5A	September 30, 2014
Independence Parkway	5A	September 30, 2014
Independence Parkway	5B	September 30, 2014

<u>Roadway</u>	<u>Phase</u>	<u>Completion Date</u>
Virginia Parkway	5B	April 1, 2015
Independence Parkway	5C	April 1, 2015
Coit Road	2	April 1, 2015
Coit Road	3	April 1, 2015

(b) Notwithstanding anything to the contrary herein or in the Second Amended and Restated Development Agreement, the references to “March 31, 2014” contained in Section V.B.(2)(b) and (f) shall, for all purposes, be replaced with “September 30, 2014.”

(c) Developer will fund, construct and dedicate, at no cost to the City, each of the roadway sections identified in Section 3(a), *supra*, and referenced in Exhibit “1M-A” attached hereto, pursuant to the terms of Section V.B.(1) and (2) of the Second Agreement.

4. To the extent any term or provision of the Second Amended and Restated Development Agreement conflicts with any term or provision of this First Modification, this First Modification shall control. Unless expressly stated herein, all provisions and terms of the Second Amended and Restated Development Agreement remain in full force and effect and remain binding upon the Parties.

IN WITNESS WHEREOF, each of the parties hereto has caused this First Modification to the Second Amended and Restated Development Agreement to be executed by its undersigned duly authorized representative, in multiple copies, each of equal dignity, as of the date indicated.

1. Effective Date.

The Effective Date shall be the _____ day of _____, 2014.

CITY OF MCKINNEY

By _____
TOM MUEHLENBECK
Interim City Manager

ATTEST:

SANDY HART, MMC, TRMC
City Secretary

**BLUE STAR COIT 32, LLC, A TEXAS
LIMITED LIABILITY COMPANY.**

By: _____
George Mitchell
Vice-President

D.R. HORTON --- TEXAS, LTD.,

**BY: D.R. HORTON, INC.,
ITS AUTHORIZED AGENT.**

By: _____
Donald J. Tomnitz
President and CEO

206 MCKINNEY, LLC

By: _____
Mehrdad Moayed
Agent and Attorney-in-Fact for
206 McKinney, LLC

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 2014, by TOM MUEHLENBECK, Interim City Manager of the **CITY OF MCKINNEY**, a Texas municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 2014, by DONALD TOMNITZ, President and CEO of **D.R. HORTON, INC.**, (authorized agent for D.R. HORTON --- TEXAS, LTD.) a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the _____ day of _____, 2014, by MEHRDAD MOAYEDI, Agent and Attorney-in-Fact for **206 MCKINNEY, LLC**, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 2014, by GEORGE MITCHELL, Vice-President of **BLUE STAR COIT 32, LLC** a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

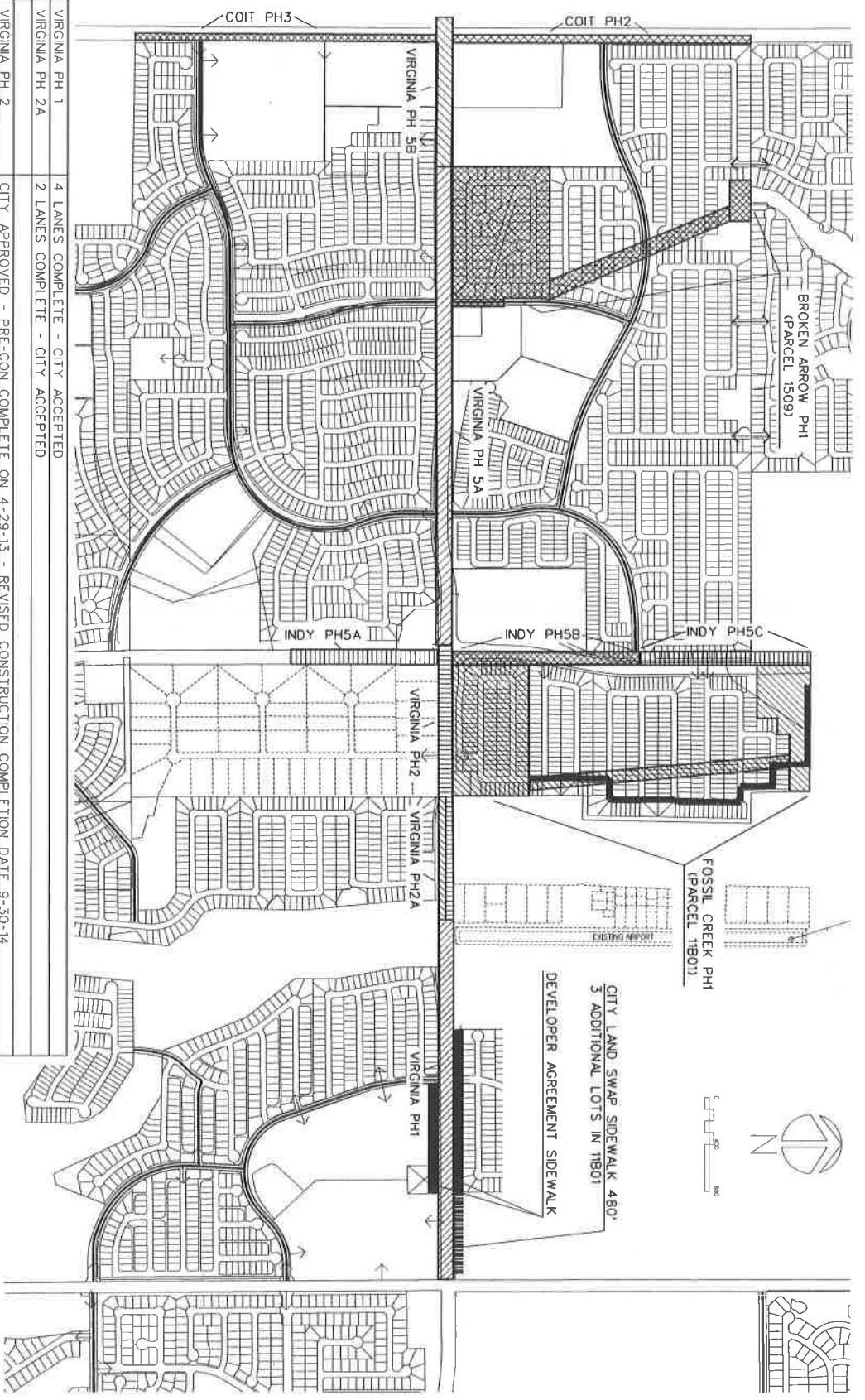
PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

EXHIBIT MA-1

April 2014 Thoroughfare Phasing Exhibit
for the
West of Custer Property
owned by
Blue Star Coit 32, LLC, 206 McKinney, LLC, and D.R. Horton --- Texas, Ltd.
and located within the
City of McKinney, Texas

VIRGINIA PH 1	4 LANES COMPLETE - CITY ACCEPTED
VIRGINIA PH 2A	2 LANES COMPLETE - CITY ACCEPTED
VIRGINIA PH 2	CITY APPROVED - PRE-CON COMPLETE ON 4-29-13 - REVISED CONSTRUCTION COMPLETION DATE 9-30-14
VIRGINIA PH 5A	CITY APPROVED - PRE-CON COMPLETE ON 4-29-13 - REVISED CONSTRUCTION COMPLETION DATE 9-30-14
INDEPENDENCE PH 5A	CITY APPROVED - PRE-CON COMPLETE ON 4-29-13 - REVISED CONSTRUCTION COMPLETION DATE 9-30-14
INDEPENDENCE PH 5B	CITY APPROVED - PRE-CON COMPLETE ON 4-29-13 - REVISED CONSTRUCTION COMPLETION DATE 9-30-14
VIRGINIA PH 5B	APPROVED IN 2008 - NEEDING UPDATED PLANS AND INTERSECTION REVISION - CONSTRUCTION COMPLETION DATE 4-1-15
INDEPENDENCE PH 5C	APPROVED IN 2008 - NEEDING UPDATED PLANS - CONSTRUCTION COMPLETION DATE 4-1-15
COIT PH 2	APPROVED IN 2008 - NEEDING UPDATED PLANS - CONSTRUCTION COMPLETION DATE 4-1-15
COIT PH 3	PLANS NOT COMPLETE - CONSTRUCTION COMPLETION DATE 4-1-15



WEST OF CUSTER
THOROUGHFARE PHASING EXHIBIT

PRITSCHKE & ASSOCIATES, INC.
 Registered Engineers - Land Planning - Surveyors - Planners
 12345 GARDENWAY DRIVE, SUITE 200
 WEST GARDENWAY, WEST GARDENWAY, WEST GARDENWAY

EXHIBIT 1M-A