

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

SECOND 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., a Texas limited partnership, ("Horton") and Horton subsequently acquired Planning Area 16; and

WHEREAS, Blue Star Coit 32, LLC, a Texas limited liability company, and 206 McKinney, LLC, a Texas limited liability company, 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 entered into that one certain agreement executed on May 29, 2014 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, (entitled the “**First Modification to the Second Amended and Restated Development Agreement (“the First Modification”)**”; 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 further modify, amend, and restate certain terms in the Second Agreement and the First Modification, 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 **Second Modification to the Second Amended and Restated Development Agreement (“the Second Modification”)** as follows:

Second 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, and any amendments made to the Second Agreement terms by the First Modification, 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 and First Modification not expressly changed herein remain in full force and continuing effect in regard to all Parties. The Second Agreement and the First Modification may be referred to collectively as “**the Development Agreement.**”

2. Section III. Platting, Zoning, and Building of the Second Agreement is amended by adding the following new subsection (d):

III. Platting, Zoning, and Building Permits

(d) Notwithstanding anything herein to the contrary, the Parties agree that development activities within the area described in the attached exhibit **2M-A**, entitled the **“Westridge Lot Takedown Exhibit,”** will be governed by that exhibit and the terms and conditions herein:

1. Subject to the Developer's satisfaction of all applicable City subdivision requirements and Development Agreement conditions for the applicable phase, the following lots are currently eligible for record plat filing, in an amount not to exceed the number of lots listed below for the following subdivision and phase, in the aggregate, notwithstanding the status of the completion by Developer and acceptance by the City of the improvements to the intersection of Coit Road and Virginia Parkway:

<u>Subdivision</u>	<u>Phase</u>	<u>Number of Lots</u>
Fossil Creek*	1	
Reserve at Westridge*	1a	
Reserve at Westridge*	7	*Up to 152 lots
Valor Pointe*	10	in the aggregate
Valor Pointe*	11	within these phases
Valor Pointe*	12	
Valor Pointe*	14	

2. Subject to the Developer's satisfaction of all applicable City subdivision requirements and Development Agreement conditions for the applicable phase, the following lots shall be eligible for record plat filing, in an amount not to exceed the number of lots listed below for the following subdivision and phase; however, only after this Second Modification has been duly approved by the McKinney City Council, executed, and filed of record in the real property records of Collin County, Texas, notwithstanding the status of the completion by Developer and acceptance by the City of the improvements to the intersection of Coit Road and Virginia Parkway:

<u>Subdivision</u>	<u>Phase</u>	<u>Number of Lots</u>
Valor Pointe	16	90

These lots are displayed in orange on the **Westridge Lot Takedown Exhibit**.

Highlands	1	66
Reserve at Westridge	19	221
Reserve at Westridge	9	32

These lots are displayed in yellow on the **Westridge Lot Takedown Exhibit**.

3. Subject to the Developer's satisfaction of all applicable City subdivision requirements and Development Agreement conditions for the applicable phase, the following lots shall be eligible for record plat filing, in an amount not to exceed the number of lots listed below for the following subdivisions and phases, after the completion by Developer and acceptance by the City of the road segments designated Independence (Parkway) PH5C, as described and depicted on **Exhibit 1M-A** to the First Modification:

<u>Subdivision</u>	<u>Phase</u>	<u>Number of Lots</u>
Fossil Creek	3	162
Fossil Creek	4	78

These lots are displayed in pink on the **Westridge Lot Takedown Exhibit**.

4. The following lots shall be issued City development permits only, and no record plats shall be recorded or building permits issued before completion by the Developer and acceptance by the City of the road segments designated Coit (Road) PH2, Coit (Road) PH3, and Virginia (Parkway) PH5B, and the improvements, including the permanent signalization (at Developer's cost), to the intersection of Coit Road and Virginia Parkway, as described and depicted on **Exhibit 1M-A** to the First Modification:

<u>Subdivision</u>	<u>Phase</u>	<u>Number of Lots</u>
Valor Pointe	16	59
Reserve	23	80
Highlands	2	77
Highlands	3	134
Highlands	4	101
Highlands	5	123
Highlands	6	97
Highlands	7	31

These lots are displayed in green (with cross-hatching) on the **Westridge Lot Takedown Exhibit**.

5. The following lots shall not be developed, and specifically there shall be no issuance of permits, no site disturbance [without City's permitting and pre-approval of detailed grading and erosion control plans and only for soil balancing on areas not identified in this Paragraph (d)(5)], no utility work, or development work of any type prior to, (i) completion by Developer and acceptance by the City of the road segments designated Coit (Road) PH2, Coit (Road) PH3, and Virginia (Parkway) PH5B, and the improvements to the intersection of Coit Road and Virginia Parkway, as described in more detail in **Exhibit 1M-A** to the First Modification:

<u>Subdivision</u>	<u>Phase</u>	<u>Number of Lots</u>
Commercial/Retail Sites	All	All
Reserve	All	All Multifamily Zoned Lots
Highlands	7	80
Highlands	8	109
Highlands	9	77
Highlands	10	125
Highlands	11	140

These lots are displayed in green (without cross-hatching) on the **Westridge Lot Takedown Exhibit**.

* * * * *

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)) and the First Modification, the deadlines for construction of the following roadway segments shall be modified and established as follows and as shown on **Exhibit “1M-A”** to the First Modification:

<u>Roadway</u>	<u>Phase</u>	<u>Completion Date</u>
Virginia Parkway	5B	May 31, 2016
Independence Parkway	5C	May 31, 2016
Coit Road	2	May 31, 2016
Coit Road	3	May 31, 2016

(b) Notwithstanding anything to the contrary herein or in the Second Amended and Restated Development Agreement, the references to “September 30, 2014” contained in Section V.B.(2)(b) and (f)), as modified by the First Modification shall, for all purposes, be replaced with “May 31, 2016.”

(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 to the First Modification, pursuant to the terms of Section V.B.(1) and (2) of the Second Agreement and the First Modification.

4. To the extent any term or provision of the Second Amended and Restated Development Agreement or the First Modification conflicts with any term or provision of this Second Modification, this Second 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.

authorized representative, in multiple copies, each of equal dignity, effective as of the date indicated.

Effective Date.

The Effective Date shall be the 19th day of May, 2015.

***CITY OF MCKINNEY,
a Texas municipal corporation***

By _____
TOM MUEHLENBECK
Interim City Manager

ATTEST:

SANDY HART, MMC, TRMC
City Secretary
DENISE VICE, TRMC
Assistant 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.,
a Delaware corporation,
its authorized agent***

By: _____
Name: _____
Title: _____

***206 MCKINNEY, LLC,
a Texas limited liability company***

By: _____
Mehrdad Moayedi
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 _____, 2015, 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 _____

This instrument was acknowledged before me on the _____ day of _____, 2015, by _____, the _____ of **D.R. HORTON, INC.**, a Delaware corporation, (authorized agent for D.R. HORTON - TEXAS, LTD.) a Texas limited partnership, 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 _____, 2015, 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 _____, 2015, 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 2M-A

Westridge Lot Takedown Exhibit
for portions of 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