THE STATE OF TEXAS §
COUNTY OF ROCKWALL §

BUILD-OUT AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS CHISHOLM RANCH ESTATES

OPENING RECITALS

- A. <u>PROPERTY</u>. Chisholm Ranch Estates, also referred to herein as the "**Property**," is a planned development located in the City of McLendon-Chisholm, Texas, according to the plat thereof recorded on July 11, 2005, as Document No. 2005-00332344, in Cabinet F, Pages 247-250, Plat Records, Rockwall County, Texas, as partially replatted from time to time.
- 8. <u>DECLARATION</u>. The Property is subject to the Amended and Restated Declaration of Covenants, Conditions and Restrictions, Chisholm Ranch Estates, recorded on October 28, 2005, as Document No. 2005-00340281, in Volume 04269, Page 00023, Real Property Records, Rockwall County, Texas, having been initially recorded on July 22, 2005, as Document No. 2005-00333273, in Volume 04119, Page 00027, as further amended from time to time, such as (without limitation) the instruments recorded (1) on March 28, 2008, as Document No. 2008-00395740, in Volume 5410, Page 55; (2) on July 10, 2008, as Document No. 2008-00401700, in Volume 5519, Page 23; (3) on March 13, 2012, as Document No. 2012-00464020, in Volume 6725, Page 205; (4) on August 29, 2013, as Document No. 2013-495579, in Volume 7370, Page 150; and (5) on August 30, 2013, as Document No. 2013-495671, in Volume 7372, Page 222 (collectively, the "Declaration").
- C. <u>DECLARANT</u>. D. R. Horton Texas, Ltd., a Texas limited partnership, is the "**Declarant**" of Chisholm Ranch Estates, having succeeded the original Declarant pursuant to the assignment recorded on March 13, 2012, as Document No. 2012-00464020, in Volume 6725, Page 205, Real Property Records, Rockwall County, Texas.
- D. <u>AUTHORITY</u>. In its capacity as Declarant of Chisholm Ranch Estates and Owner of more than one Lot in Chisholm Ranch Estates, D. R. Horton-Texas, Ltd., is authorized by Section 6.2(a) of the Declaration to unilaterally amend the Declaration without joinder of any person or other Owner.

BACKGROUND RECITALS

- A. <u>PURPOSE</u>. At the time the Declaration was drafted and recorded by the previous declarant, its provisions were based on certain assumptions, facts, and laws, some of which were subsequently changed or determined to be false. Declarant desires to update, change, or correct certain of those provisions of the Declaration by publicly recording this instrument to be effective as if it had been part of the Declaration when the Amended and Restated Declaration was recorded on October 28, 2005.
- B. <u>CHANGED CONDITIONS</u>. Two consequential conditions have changed since the Declaration was initially written and recorded. First, a severe and prolonged economic recession and housing depression significantly altered the original projected timetable for completing the development and selling all the homes. It is in the best interests of current and future Owners of Chisholm Ranch Estates, as well as the community at large, for the Property to be fully built-out and populated. Towards that end, Declarant desires to reinforce its reserved rights under the Declaration to oversee the complete and orderly build-out and sell-out of Chisholm Ranch Estates, and to shepherd the property owners association for the maximum length of time permitted by Texas law.

The second changed condition occurred in 2011, when Texas enacted laws that require a declarant to include certain provisions in a declaration in order to retain certain declarant and development rights. Because the new laws apply to developments like Chisholm Ranch Estates that were created before the new laws were adopted, the Declaration must be amended for Declarant to preserve the rights it created for itself under prior law.

AMENDMENTS

Pursuant to its authority to unilaterally amend the Declaration during the Development Period, Declarant hereby adopts the following amendments of the Declaration.

- 1. To address a 2011 change of State law, Article 6 of the Declaration is hereby amended by the addition of the following new Section 6.11, titled "Number of Lots":
 - 6.11 <u>Number of Lots</u>. To satisfy a requirement of applicable law that the Declaration state the maximum number of residential Lots that may be created in the Property, Declarant hereby states that maximum number as 1.00 residential Lots, and reserves the right to increase or reduce the maximum number by amendment of this Declaration. The disclosure of a maximum number of residential Lots does not obligate Declarant to annex land, to create Lots, or to subject Lots to the Declaration, and may not be construed as any kind of representation regarding common areas.
- 2. To ensure conformity with a 2011 statutory definition of "Development Period," Article 6 of the Declaration is hereby amended by the addition of the following new Section 6.12, titled "Development Period":"
 - 6.12 <u>Development Period</u>. Declarant hereby reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape, and composition of the Property, to the full extent permitted by applicable law, for the length of the Development Period. The Development Period runs continuously from the date on which the Declaration is recorded until the date on which every Lot in the Property is improved with a completed dwelling and owned by a person other than a Builder, Declarant, or their respective affiliates. If applicable law requires a stated term of years, the Development Period expires 30 years after the date on which the Declaration is recorded. Declarant may terminate the Development Period at any time by publicly recording a notice of termination.
- 3. For applying State laws that address a declarant's control of the property owners association, Article 6 of the Declaration is hereby amended by the addition of the following new Section 6.13, titled "Declarant Control":
 - 6.13 <u>Declarant Control</u>. Declarant has the right to control the Association for the maximum period permitted by State law, by casting all of its votes for Declarant's authorized representatives, each of whom qualifies as an "Owner" for so long as Declarant owns a Lot in the Property, and each of whom serves at the pleasure of Declarant. Because Declarant's votes outnumber those of all other Owners combined, pursuant to Section 4.3(b) above, Declarant has the unilateral right to appoint, remove, and replace from time to time its representatives who serve as officers and directors of the Association.

CLOSING RECITALS

- A. The terms and provision of this Build-Out Amendment are to be liberally construed to give effect to the purposes and intent of this Amendment to protect the interests of Declarant in completing the build-out and sell-out of every residential Lot in Chisholm Ranch Estates. If an aspect of this Build-Out Amendment addresses the same topic as an applicable statute, the two will be harmonized, if possible, so that effect may be given to each. Invalidation of any provision or aspect of this Build-Out Amendment by judgment or court order does not affect any other provision, which remains in full force and effect.
- B. By signing below, D. R. Horton-Texas, Ltd., certifies that it (1) is the Declarant of Chisholm Ranch Estates, as defined in the Declaration, (2) owns more than one Lot in Chisholm Ranch Estates (also described as owning Lots "in the Association"), and (3) has sufficient authority to make this amendment.
- C. The President and Secretary of Chisholm Ranch Estates Homeowners Association, Inc., execute this instrument, as required by Section 6.2(a) of the Declaration, for the sole purpose of certifying that Declarant owns at least one Lot in Chisholm Ranch Estates on the date hereof.

SIGNED on the date stated in the acknowledgment below.

D. R. HORTON - TEXAS, LTD., a Texas limited partnership

By: D. R. HORTON, INC., a Delaware corporation, its authorized agent

David L. Booth, Assistant Vice President

THE STATE OF TEXAS S
COUNTY OF DALLAS

This instrument was acknowledged before me on this $\frac{1}{2} \frac{\delta^2}{\delta^2}$ day of May 2015 by David L. Booth, Assistant Vice President of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.



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Notary Public, The State of Texas

CERTIFYING AS TO DECLARANT'S LOT OWNERSHIP

CHISHOLM RANCH ESTATES HOMEOWNERS ASSOCIATION, INC., a Texas property owners association and nonprofit corporation

By:

David L. Booth, President

Rv

Keike M. Smith Secretary

THE STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on this ______ day of May 2015 by David L. Booth and Kellie M. Smith, President and Secretary, respectively, of Chisholm Ranch Estates Homeowners Association, Inc., a Texas property owners association and nonprofit corporation, on behalf of the association.

Notary Public, The State of Texas

KAREN LEE WILLIAMS
MY COMMISSION EXPIRES
January 3, 2017

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PAGE FOR USE BY ROCKWALL COUNTY CLERK

Electronically Filed and Recorded Official Public Records Shelli Miller, County Clerk Rockwall County, Texas 05/04/2015 08:18:41 AM Fee: \$38.00 20150000006045

