

**RESTRICTIVE COVENANT**

- OWNER: Continental Homes of Texas, LP, a Texas limited partnership, dba D.R. Horton-America's Builder ("Continental Homes")
- ADDRESS: 12554 Riata Vista Circle, 2<sup>nd</sup> Floor, Austin TX 78727
- OWNER: JPMorgan Chase Bank, N.A., Trustee of the Frederic Clarke Morse, Jr. Exempt Family Trust and Frederic C. Morse, III and Scott Morse, Independent Co-Executors of the Estate of Frederic C. Morse, Sr., (collectively "Morse")
- ADDRESS: c/o Scott Morse, 2630 Exposition Blvd, Ste. 119, Austin Texas 78703 and c/o Kyle Gubernator, 613 NW Loop 410, Ste. 350, San Antonio, Texas 78216
- CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.
- PROPERTY: A 191.43 acre tract of land, more or less, located in Travis County, Texas, being more particularly described by metes and bounds in Exhibit A incorporated into this restrictive covenant (Continental Homes Property); and,
- A 29.33 acre tract of land, more or less, located in Travis County, Texas, being more particularly described by metes and bounds in Exhibit B incorporated into this restrictive covenant. (Morse Property)

WHEREAS, the Owners of the Continental Homes Property and the Morse Property and the City of Austin have agreed that the two properties should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owners of the Continental Homes Property and the Morse Property, for the consideration, shall hold, sell and convey the properties, subject to the following covenants and restrictions impressed upon such properties by this restrictive covenant ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owners of the properties, their heirs, successors, and assigns.

1. The developer of the Morse Property shall provide access from the tract to Brown Lane, as follows:
  - a) A direct street connection from the Continental Homes Property to Brown Lane is not required.
  - b) A cul-de-sac turnaround is required for the Morse Property during the subdivision stage to terminate Brown Lane in accordance with City of Austin standards.
  - c) The Morse Property shall connect to Brown Lane at the cul-de-sac by means of a commercial Type II driveway.

- d) A public easement from the cul-de-sac through the Continental Homes Property to public right-of-way shall be required to provide connectivity for bicycle and pedestrian use to and from Brown Lane.
  - e) The developer of the Continental Homes Property is responsible for the design, construction, and delivery of items 1.d in accordance with the City of Austin's requirements. The developer of the Morse Property is responsible for the design, construction, and delivery of items 1.b and 1.c in accordance with the City of Austin's requirements.
  - f) A building permit for either the Continental Homes Property or the Morse Property may not be approved, released, or issued, until the improvements described in items 1.b through 1.d are completed in accordance with this Agreement and with the City of Austin's requirements.
- 2. If any person or entity shall violate or attempt to violate this Agreement, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Agreement, to prevent the person or entity from such actions, and to collect damages for such actions.
  - 3. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Agreement, and such remaining portion of this Agreement shall remain in full effect.
  - 4. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
  - 5. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property, or a portion of the Property, subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**OWNERS:**

**Continental Homes of Texas, LP, a Texas limited partnership, dba D.R. Horton-America's Builder**

By: CHTEX of Texas, Inc.,  
a Texas corporation,  
its general partner

By: \_\_\_\_\_  
Richard N. Maier,  
Vice President

**Estate of Frederic C. Morse, Sr.**

By: \_\_\_\_\_  
Fred C. Morse, III,  
Independent Co-Executor

By: \_\_\_\_\_  
Scott Morse,  
Independent Co-Executor

**JPMorgan Chase Bank, N.A. Trustee of the  
Frederic Clarke Morse, Jr. Exempt Family Trust**

By: \_\_\_\_\_  
Matthew A. Thiesen,  
Vice President, Asset Management

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Chad Shaw  
Assistant City Attorney  
City of Austin

**After Recording, Please Return to:**  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767-1088  
Attention: Diana Minter, Paralegal

**THE STATE OF TEXAS                   §**

**COUNTY OF TRAVIS                   §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Richard N. Maier, Vice President of CHTEX of Texas, Inc., a Texas corporation, general partner of Continental Homes of Texas, LP, a Texas limited partnership, dba D.R. Horton-America's Builder, on behalf of the corporation and the limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS                   §**

**COUNTY OF TRAVIS                   §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Matthew A. Thiesen, Vice President, Asset Management, of JPMorgan Chase Bank, N.A., Trustee of the Frederic Clarke Morse, Jr. Exempt Family Trust.

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS                   §**

**COUNTY OF TRAVIS                   §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Fred C. Morse, III, Independent Co-Executor of the Estate of Frederic C. Morse, Sr.

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS**           §

**COUNTY OF TRAVIS**           §

      This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_,  
2011, by Scott. Morse, Independent Co-Executor of the Estate of Frederic C. Morse, Sr.

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Notary Public, State of Texas