

RESOLUTION NO. R-2021-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING A TRI-PARTY AGREEMENT REGARDING FUTURE CONNECTIONS IN THE COLONY PROJECT TO OFF-SITE ROADWAYS, AS ATTACHED IN EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop previously entered into a "Consent for The Colony Municipal Utility District No. 1 and Successor Districts to be Created by the Division of the Colony Municipal Utility District No. 1: on February 23, 2004; and

WHEREAS, the City of Bastrop City entered into a "First Amendment to Consent Agreement for The Colony Municipal Utility District No. 1 and Successor Districts to be Created by the Division of the Colony Municipal District No. 1" on June 14, 2016; and

WHEREAS, the City of Bastrop entered into a "Second Amendment to Consent Agreement for The Colony Municipal Utility District No. 1 and Successor Districts to be Created by the Division of the Colony Municipal District No. 1" on November 7, 2017; and

WHEREAS, the City of Bastrop entered into a "Third Amendment to Consent Agreement for The Colony Municipal Utility District No. 1 and Successor Districts to be Created by the Division of the Colony Municipal District No. 1" on November 12, 2019; and

WHEREAS, the City of Bastrop entered into a "Fourth Amendment to Consent Agreement for The Colony Municipal Utility District No. 1" on November 10, 2020; and

WHEREAS, the developer wants to delay the construction of roadway connections to be made to off-site developments until the adjacent property begins to develop, or the total number of platted lots for the Colony MUD project reaches 3,225 lots; and

WHEREAS, the County will agree to accept the dedication of right-of-way and the future roadway improvements as public county roads.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. That the City Council of the City of Bastrop, Texas approves the Tri-Party Agreement Regarding Future Connections in the Colony Project to Off-Site Roadways, as attached in Exhibit A.

Section 2. The City Manager is hereby authorized to execute the Tri-Party Agreement Regarding Future Connections in the Colony Project to Off-Site Roadways.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 9th day of February, 2021.

APPROVED:



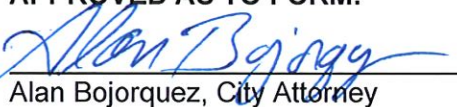
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

**TRI-PARTY AGREEMENT REGARDING FUTURE
CONNECTIONS IN THE COLONY PROJECT TO OFF-SITE ROADWAYS**

This **TRI-PARTY AGREEMENT REGARDING FUTURE CONNECTIONS IN THE COLONY PROJECT TO OFF-SITE ROADWAYS** (this "*Agreement*") is entered into effective as of February 9, 2021 among the **CITY OF BASTROP, TEXAS**, a Texas municipal corporation located in Bastrop County (the "*City*"); the **COUNTY OF BASTROP, TEXAS**, a political subdivision of the State of Texas (the "*County*"); and **HUNT COMMUNITIES BASTROP, LLC**, a Delaware limited liability company ("*Developer*"). The City, the County, and the Developer are sometimes referred to herein collectively as the "*Parties*" and individually as a "*Party*".

RECITALS

WHEREAS, the City and Sabine Investment Company, a Delaware corporation ("*Sabine*"), previously entered into a Consent Agreement for The Colony Municipal Utility District No. 1 and Successor Districts to be Created by the Division of The Colony Municipal Utility District No. 1 dated effective as of February 23, 2004 (the "*Original Consent Agreement*"), which, among other things, provided for the creation of The Colony Municipal Utility District No. 1 (the "*Original District*") and a regulatory process for the development of The Colony master-planned project ("*Project*");

WHEREAS, the Original District was created by House Bill 3636, Acts of the 78th Legislature, Regular Session, CH. 778, Texas Session Law Service 2003 (the "*Creation Legislation*") and, as required by the Original Consent Agreement, the Original District joined in and consented to the Original Consent Agreement;

WHEREAS, as permitted by the Creation Legislation and the Original Consent Agreement, the Original District, pursuant to an election held by the Original District on February 5, 2005, subsequently divided in to The Colony Municipal Utility District No. 1A, The Colony Municipal Utility District No. 1B, The Colony Municipal Utility District No. 1C, The Colony Municipal Utility District No. 1D, The Colony Municipal Utility District No. 1E, The Colony Municipal Utility District No. 1F, and The Colony Municipal Utility District No. 1G (individually, a "*Successor District*" and collectively, the "*Successor Districts*"), and, as required by the Original Consent Agreement, the Successor Districts all joined in and consented to the Original Consent Agreement;

WHEREAS, effective December 30, 2006, Sabine merged with and into Forestar (USA) Real Estate Group Inc., a Delaware corporation ("*Forestar*"), at which time Forestar succeeded, by operation of law, to Sabine's interest in and to the Original Consent Agreement; and, in order to memorialize the merger, Forestar also joined in and consented to the Original Consent Agreement;

WHEREAS, the City, Forestar, and the Successor Districts later entered into a First Amendment to Consent Agreement for the Colony Municipal Utility District No. 1 and Successor Districts to be Created by Division of the Colony Municipal Utility District No. 1 dated effective as of June 14, 2016;

WHEREAS, Forestar, with the consent of the City and the Successor Districts, subsequently assigned all of its right, title, and interest in, to, and under the Consent Agreement to the Developer pursuant to an Assignment of Consent Agreement for The Colony Municipal Utility District No. 1 and Successor Districts to be Created by the Division of The Colony Municipal Utility District No. 1 and Consent dated effective December 30, 2016;

WHEREAS, the City, the Developer, and the Successor Districts later entered into a Second Amendment to Consent Agreement for the Colony Municipal Utility District No. 1 and Successor Districts to be Created by Division of the Colony Municipal Utility District No. 1 dated effective as of November 7, 2017, and a Third Amendment to Consent Agreement for the Colony Municipal Utility District No. 1 and Successor Districts to be Created by Division of the Colony Municipal Utility District No. 1 dated effective as of March 4, 2020 (the Original Consent Agreement, as joined in, assigned, and amended, being referred to herein collectively as the "Consent Agreement");

WHEREAS, among other things, the Consent Agreement provides that the Project will be developed generally in accordance with the "Project Master Plan" attached as Exhibit "A" (and herein so defined) that identifies 11 future connections within the Project to off-site roadways (each labeled on the Project Master Plan and defined herein as a "Future Connection"); and

WHEREAS, the Parties desire to enter into this Agreement to coordinate the timing, mechanics, and other matters related to the future platting, dedication, and construction of the Future Connections;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Platting, Dedication, and Construction of Future Connections. Prior to the date on which the number of platted single-family residential lots within the Project (established by recorded plat) exceeds 3,225 (the "Trigger Date"), the Developer will:

(a) at the time that each area within the Project that includes a Future Connection is final platted, designate the right of way for such Future Connection as a "ROW Reserve" on the final plat;

(b) upon recordation of the final plat in the County records, separately dedicate to the County a right of way easement for such platted ROW Reserve; and

(c) be required to construct each such Future Connection platted as a ROW Reserve within one year after the earlier of

(i) the Trigger Date; or

(ii) the date on which the City finally approves a plat for land adjoining the Project that includes a roadway connection to such platted ROW Reserve.

For the avoidance of doubt, the Developer will not be required to post fiscal for any Future Connection platted as ROW Reserve prior to the Trigger Date. After the Trigger Date, the Developer will, as each area within the Project that includes a Future Connection is final platted, plat the Future Connection as right of way, post fiscal for the construction of such Future Connection (if not constructed at the time of plat recordation), and construct such Future Connection as part of the subdivision infrastructure improvements serving the plat that includes

¹ The Project Master Plan identifies a total of 12 Future Connections; however, the connection on Sam Houston Drive between The Colony MUD No. 1E and the original non-MUD portion of The Colony project is currently existing and will not be considered a Future Connection for purposes of this Agreement.

such Future Connection. For purposes of tracking the Trigger Date, the Developer will provide the City and the County with a "running tally" of platted single-family residential lots within the Project concurrently with each final plat submittal for an area within the Project.

2. Project Roadways. The Third Amendment to the Consent Agreement provides that the streets within the Project will be dedicated to the County or a property association ("POA") for operation and maintenance and that local streets off main collector roadways may be gated. The Parties hereby agree that the roadways within the Project that are not gated will be public and will be dedicated to and accepted by the County for operation and maintenance in accordance with County policies; and that the roadways that are gated will be private and will be dedicated to and operated and maintained by a POA. Gates across any fire apparatus road (public or private) must be approved by the applicable fire code official; must have an approved means of emergency operation; and must be maintained in operational condition.

3. Notices. All notices allowed or required to be given hereunder must be in writing and must be personally delivered or dispatched by United States certified mail, postage prepaid, return receipt requested, to the addresses shown on the counterpart signature pages to this Agreement. Either Party may change its address by giving notice in writing to the other Parties of such change. Any time limitation provided for in this Agreement will commence with the date that the Party actually receives such written notice, and the date of postmark of any return receipt indicating the date of delivery of such notice to the addressee will be conclusive evidence of such receipt.

4. Miscellaneous. This Agreement comprises the entire agreement among the Parties, and supersedes any prior understandings or written or oral agreements concerning, regarding the subject matter hereof. This Agreement will be binding upon the Parties and their successors and permitted assigns. The provisions of this Agreement may be modified or altered only by mutual agreement of the Parties. This Agreement will be construed under and in accordance with the laws of the State of Texas. All of the obligations contained in this Agreement are performable in Bastrop County, Texas. No consent or waiver, expressed or implied, to or of any default of any covenant or provision hereof by any Party will be construed as a consent or waiver to or any other default of the same or any other covenant or provision. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected thereby, and it is also the intention of the Parties that, in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a Part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible, and is legal, valid, and enforceable. Any Party to this Agreement who is the prevailing party in any legal proceeding against any other Party brought under or in connection with this Agreement or the subject matter hereof will be additionally entitled to recover court costs and reasonable attorney's fees, and all other litigation expenses, including deposition costs, travel, and expert witness fees, from the non-prevailing Party. Each Party represents and warrants that it has the full right, power, and authority to execute this Agreement and all related documents. Each person executing this instrument on behalf of a Party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective Party.

5. Counterparts. To facilitate execution, (a) this Agreement may be executed in any number of counterparts; (b) the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts; and (c) an electronic signature, or a signature delivered by facsimile or in another electronic format (e.g., .PDF via email), will be deemed to be an original signature for all purposes. All executed counterparts of this instrument will be deemed to be originals, and all such counterparts, when taken together, will constitute one and the same agreement.

* * *

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

[counterpart signature pages follow]

COUNTERPART SIGNATURE PAGE TO:
TRI-PARTY AGREEMENT REGARDING FUTURE
CONNECTIONS IN THE COLONY PROJECT TO OFF-SITE ROADWAYS

CITY:

CITY OF BASTROP, TEXAS

By: *Paul A. Hofmann*
Paul A. Hofmann, City Manager

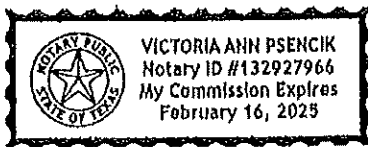
Address:

Bastrop City Hall
PO Box 427
Bastrop, TX 78602

THE STATE OF TEXAS §
§
COUNTY OF BASTROP §

This instrument was acknowledged before me on the 23rd day of March, 2021, by Paul A. Hofmann, City Manager of the City of Bastrop, a Texas municipal corporation, on behalf of said city.

Victoria Ann Pencil
NOTARY PUBLIC, State of Texas



COUNTERPART SIGNATURE PAGE TO:

**TRI-PARTY AGREEMENT REGARDING FUTURE
CONNECTIONS IN THE COLONY PROJECT TO OFF-SITE ROADWAYS**

COUNTY:

COUNTY OF BASTROP, TEXAS

By: Paul Pape

Paul Pape, County Judge

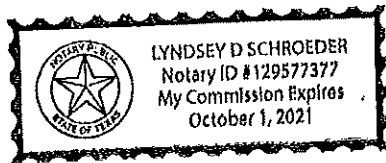
Address:

804 Pecan St
Bastrop Tx. 78002

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on the 12th day of April, 2021, by Paul Pape, County Judge of the County of Bastrop, a political subdivision of the State of Texas, on behalf of said county.

Lyndsey Schroeder
NOTARY PUBLIC, State of Texas



COUNTERPART SIGNATURE PAGE TO:
TRI-PARTY AGREEMENT REGARDING FUTURE
CONNECTIONS IN THE COLONY PROJECT TO OFF-SITE ROADWAYS

DEVELOPER:

HUNT COMMUNITIES BASTROP, LLC, a Delaware limited liability company

By: Hunt Communities Development Co., LLC, a Texas limited liability company, its Sole Member

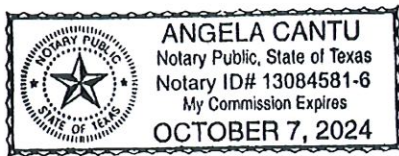
By: 
Rick Neff, Senior Vice President

Address:

Hunt Communities Bastrop, LLC
Attn: Rick Neff
4401 N. Mesa
El Paso, Texas 79902

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 19th day of January, 2021, by Rick Neff, Senior Vice President of Hunt Communities Development Co., LLC, a Texas limited liability company, Sole Member of Hunt Communities Bastrop, LLC, a Delaware limited liability company, on behalf of said limited liability companies.



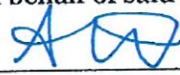
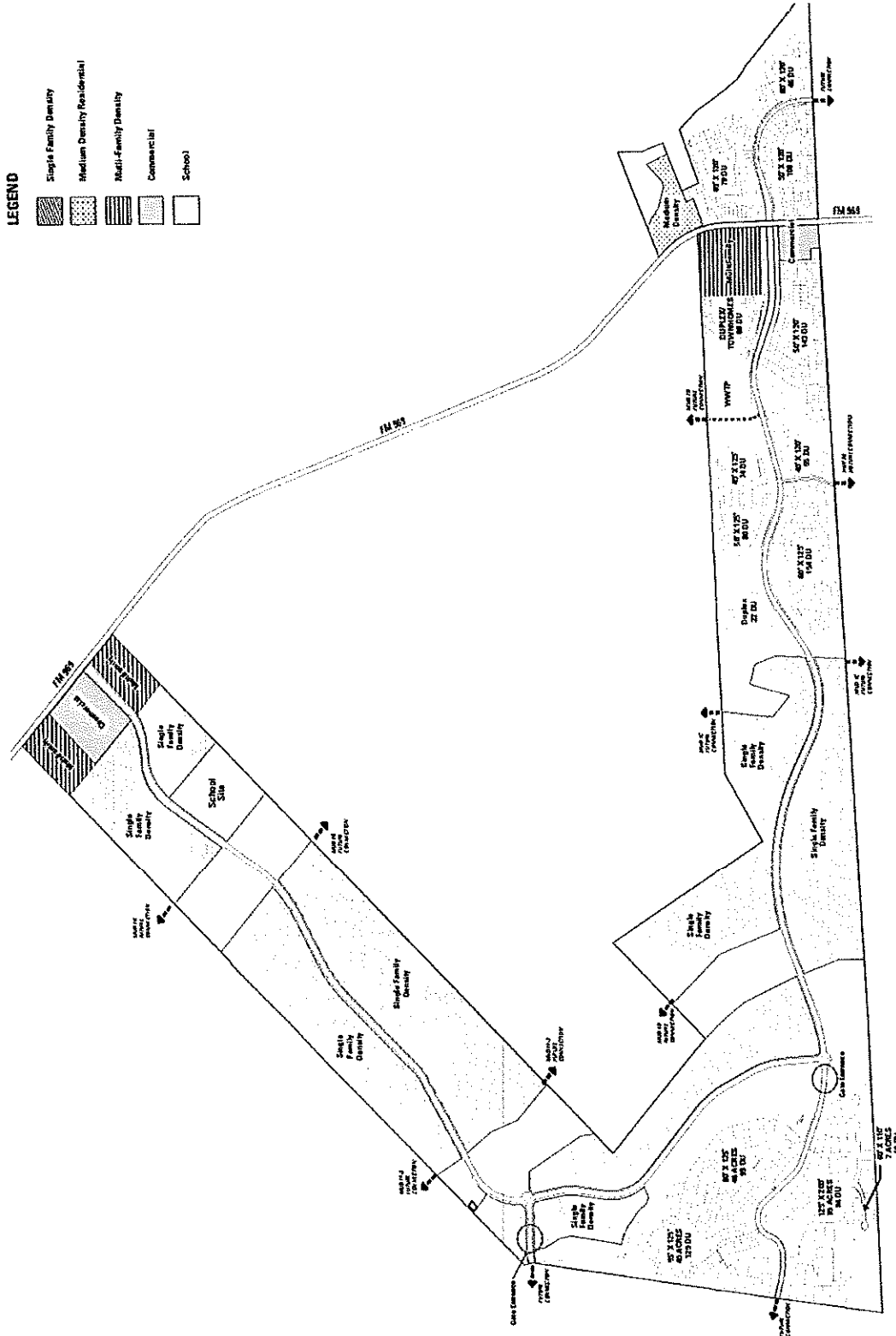

NOTARY PUBLIC, State of Texas

EXHIBIT "A" PROJECT MASTER PLAN



THE COLONY / 4,300 DU CONSENT AGREEMENT LAND PLAN

Saratoga, TX 02 August 2019 HUNT

