

RESOLUTION NO. R-2021-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AUTHORIZING AND CREATING THE VIRIDIAN PUBLIC IMPROVEMENT DISTRICT (FORMERLY KNOWN AS THE NEU COMMUNITY BASTROP), ESTABLISHING THE PID BOUNDARIES FOR A 410-ACRE TRACT ADJACENT TO THE CITY LIMITS TO THE WEST OF FM 969 AND SOUTH WEST OF THE COLORADO RIVER (ORIGINAL OWNER DAVID K. GRASSEL), REVIEW OF DRAFT CONCEPTUAL PLANS, AND CONSIDERATION AND APPROVAL OF RELATED LAND USE DEVELOPMENT CONTRACTUAL DOCUMENTS INVOLVING DR HORTON, AND CONTINENTAL HOMES OF TEXAS

**WHEREAS**, Chapter 372 of the Texas Local Government Code (the "Act") authorizes the creation of public improvement districts; and

**WHEREAS**, owners of real property located in Bastrop County west of Bastrop County Road 969, and south west of the Colorado River, delivered to the City of Bastrop a petition (the "Petition") indicating the (i) the owner of more than 50% of the appraised value of the taxable real property liable for assessment and (ii) the owners of more than 50% of the area of all taxable real property liable for assessment within the District (the "Owner" or "Developer") have executed the Petition requesting that the City Council create the Viridian Public Improvement District (the "District"), as shown on Exhibit "A" (the "Map of the District"); and

**WHEREAS**, after providing the notices required by Section 372.009 of the ACT, the City Council of the City of Bastrop on December 8, 2020 conducted a public hearing on the advisability of the improvements and services related to the proposed District; and

**WHEREAS**, the City Council adjourned such public hearing held on December 8, 2020 and after receiving the public input and considering same, and evaluating the supporting information received by the City from the Developer, related to the creation of the District, the Council takes the following action.

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

**Section 1. Findings.** Pursuant to the requirements of the Act, the City Council, after considering the Petition for the proposed District and the evidence and testimony presented at the public hearing on March 9, 2021 hereby finds and declares:

- (a) Advisability of Services and Improvements Proposed for the District. It is advisable to create the District to provide the services and improvements described in this Resolution; the services and improvements will contribute to the public health, safety, and welfare.
- (b) Nature of the Services and Improvements. The general nature of the services and improvements to be performed by the District are:
  - (i) acquisition, construction and improvement of sidewalks, streets, other roadways, and rights-of-way;

- (ii) acquisition, construction, and improvement of water, wastewater and drainage facilities;
  - (iii) landscaping;
  - (iv) establishment and improvement of parks;
  - (v) acquisition, construction, and improvement of off-street parking facilities;
  - (vi) projects similar to those listed in subsections (i) - (v) above authorized by the Act;
  - (vii) other improvement projects not listed in subsections (i) - (vi) above but that are authorized by the Act; and
  - (viii) payment of costs associated with developing and financing the public improvements listed in subparagraphs (i) - (vii) above, including costs of establishing, administering, and operating the District.
- (c) Estimated Cost of Services and Improvements. The estimated amount of bonds to be issued for the District through assessments for the first three (3) years of the District ' s term, is not more than \$40,000,000. The total bonded indebtedness over the term of the District is anticipated to be not more than \$40,000,000. The petitioners have represented to the City that these amounts will be supplemented with (i) additional revenue expected to be received from governmental reimbursement and participation agreements, and (ii) developer equity investment and debt financing. These anticipated additional funds are expected to be detailed in the proposed Service Plan associated with the District.
- (d) Boundaries. The District is located in the extraterritorial jurisdiction of the City of Bastrop, Texas. The boundaries of the District are shown on the Map of the District, Exhibit "A."
- (e) Method of Assessment. District costs may be assessed using any methodology that results in the imposition of equal shares of the costs on property similarly benefited within the District.
- The City shall exclude the following classes of property from assessment: (i) property of the City; (ii) property of the County; (iii) property owned by political subdivisions of the State of Texas and used for public purposes; and (iv) other property that is excluded by law or by agreement of the City and the petitioners.
- (f) Assessment Roll and Setting of Rate. The City Chief Financial Officer shall annually prepare or have prepared an assessment

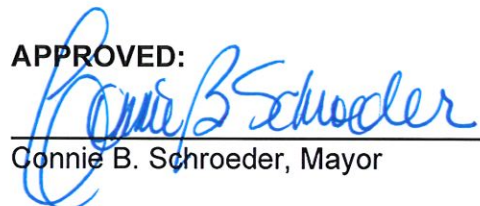
roll and file that roll with the County Clerk, in conformity with the exemptions from the assessment established under subparagraph (e) above. The annual assessment installment for the first year for which bonds are issued shall not exceed \_\_\_% of each parcel's anticipated build out value per \$100.00 valuation of taxable real property as shown on the tax rolls of the Bastrop Central Appraisal District.

**Section 2. Authorization and Creation.** The NEU Community Public Improvement District is hereby authorized and created as a Public Improvement District under the Act in accordance with the findings set forth in this Resolution as to the advisability of the services and improvements. The District shall be subject to the terms, conditions, limitations, and reservations contained in the findings of Section 1 of this Resolution.


**Section 3: Notice of Authorization.** The City Secretary is directed to give notice of the authorization of establishment of the District by publishing a copy of this Resolution once in a newspaper of general circulation in the City of Bastrop. Such authorization shall take effect and the District shall be deemed to be established effective upon publication of such notice. The District can be terminated as provided by law. Subject to the last sentence of this Section 3, the power of the City to continue to levy and collect assessments within the District pursuant to the Act will cease and the District will be dissolved following the date that a petition requesting dissolution is filed with the City Secretary of the City of Bastrop and the petition contains signatures of at least the number of property owners in the District to make the petition sufficient for creation of a public improvement district as provided in Section 372.005(b) of the Act, and a public hearing has been held by the City Council as described in Section 372.011 of the Act. If the District is dissolved, the District shall remain in effect for the purpose of meeting obligations of indebtedness.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this 9<sup>th</sup> day of March, 2021.


**APPROVED:**

  
\_\_\_\_\_  
Connie B. Schroeder, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney



## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "**Agreement**"), dated the 9<sup>th</sup> day of March, 2021 (the "**Effective Date**"), is entered into by, between, among and for the benefit of the City of Bastrop, Texas, a home rule city (the "**City**"), and Continental Homes of Texas, L.P., a Texas limited partnership (the "**Developer**").

**WHEREAS**, the Developer desires that the City enter into negotiations related to a new development of an area located within the City's jurisdiction (the "**Project**"); and

**WHEREAS**, the Developer desires that a public improvement district ("**PID**") be created to help finance certain public improvements necessary to provide water, wastewater, drainage and roadway facilities and development amenities for the Property more particularly depicted in EXHIBIT A attached hereto (the "**Property**"); and

**WHEREAS**, a petition to create a PID on the Property pursuant to Chapter 372 of the Texas Local Government Code has been submitted to the City; and

**WHEREAS**, the City and the Developer desire to negotiate a development agreement to provide for terms and conditions related to the Project (the "**Development Agreement**"); and

**WHEREAS**, the City and the Developer recognize and agree that the City will incur fees and associated expenses and costs for professional services for work to negotiate, develop, draft, and consider various concepts and documents in connection with its consideration of the PID and Development Agreement, including but not limited to the following: appraisal, legal publications, notices, public hearing expenses, attorney's fees, assessment administrator fees and special consultant fees (collectively, the "**Professional Services**"); and

**WHEREAS**, the City and the Developer recognize and agree that the fees anticipated to be incurred by the City for Professional Services directly related to the Project cannot be recouped by the City through standard administrative or permit fees; and

**WHEREAS**, the City's engagement of professionals to perform the Professional Services and its participation in the undertakings described above are voluntary and of value to the Developer and the Developer desires to reimburse the City's fees and expenses related to the Professional Services.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the City and the Developer agree as follows:

1. Recitals. The representations, covenants and recitations set forth in the foregoing recitals and in this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this paragraph.

2. Developer Payment.

- (a) Delivery. Developer shall deliver, or shall have delivered, to the City the sum of \$26,000.00 upon the effective date of this Agreement, and shall deliver to the City an additional sum of \$100,000.00 upon the formation of the PID (the "**Developer Payment**") to pay for the Professional Services and the related expenses incurred by the City.
- (b) Invoices. Fees for all Professional Services to be covered by the Developer Payment shall be evidenced by monthly invoices that describe the work performed by date and time entries (copies of which invoices shall be provided to Developer at least 10 days before they are paid).
- (c) Segregation of Funds. The Developer Payment shall be deposited in a segregated account and not be commingled with any other City funds.
- (d) Replenishment of Funds. If the cost of Professional Services exceed the Developer Payment, the City shall notify the Developer in writing and the Developer may elect to: (i) make one or more additional payment(s) of \$20,000.00 each within thirty (30) days of such written request and such additional payment will be deposited by the City and utilized in the same manner described above, or (ii) negotiate in good faith to amend this Agreement to provide for a reasonable amount of additional payment by Developer.
- (e) Non-contingent. The payment(s) made by the Developer under this Agreement are not contingent upon any outcome of the negotiations between the City and the Developer.
- (f) Non-inclusivity. The Developer Payment is in addition to, not instead of, standard, generally-applicable administrative or permit fees required by ordinance for City consideration and approval of development approvals. Nothing herein relieves the Developer from the obligation to remit payment of applicable administrative and permit fees for authorizations sought from the City.

3. Termination.

- (a) Means. This Agreement may be terminated by either party with or without cause upon delivering to the other party written notice of termination. Unless earlier terminated by Developer or the City, this Agreement shall automatically terminate when the City has created the PID and the initial series of PID Bonds have been issued by the entity designated to issue such bonds.

(b) Stop Work. Upon termination of this Agreement for any reason, the City shall take all reasonable steps necessary to terminate the accrual of costs to the Developer.

(c) Refund. Upon termination of this Agreement for any reason, any balance of the Developer Payment and any balance of any additional payment(s) made by Developer under this Agreement that exceed the City's fees, costs and expenses incurred as of termination shall be returned to Developer.

4. Relationship. Nothing in this Agreement creates a relationship between the Developer and the City's Professional Services providers. Furthermore, this Agreement does not grant the Developer access to any privileged or confidential data provided to the City by the City's Professional Services providers.

5. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding Professional Services.

6. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed given upon delivery by a nationally recognized private service (e.g., FedEx or UPS) to the following respective addresses of the parties:

To the City:           City of Bastrop  
                              Bastrop City Hall  
                              1311 Chestnut Street  
                              Bastrop, TX 78602

With a copy to:       Alan Bojorquez  
                              Bojorquez Law Firm, PC  
                              11675 Jollyville Rd., Ste 300  
                              Austin, TX 78759  
                              [Alan@TexasMunicipalLawyers.com](mailto:Alan@TexasMunicipalLawyers.com)

To the Developer:    Continental Homes of Texas, L.P.  
                              Attn: Adib Khoury  
                              10700 Pecan Park Blvd, 4th Floor  
                              Austin, TX 78750  
                              [ARKhoury@drhorton.com](mailto:ARKhoury@drhorton.com)

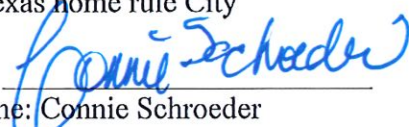
With a copy to:

Talley J. Williams  
221 W. 6th Street, Ste 1300  
Austin, Texas 78751  
TWilliams@mwswtexas.com

EXECUTED in multiple counterparts, each of which shall constitute an original, to be effective upon the date of execution by both parties.


CITY:

**CITY OF BASTROP,**  
a Texas home rule City

By:   
Name: Connie Schroeder  
Its: Mayor

Date: 3/10/2021


ATTEST:

By:   
Ann Franklin, City Secretary

OWNER:

**Continental Homes of Texas, L.P.,**  
a Texas limited partnership

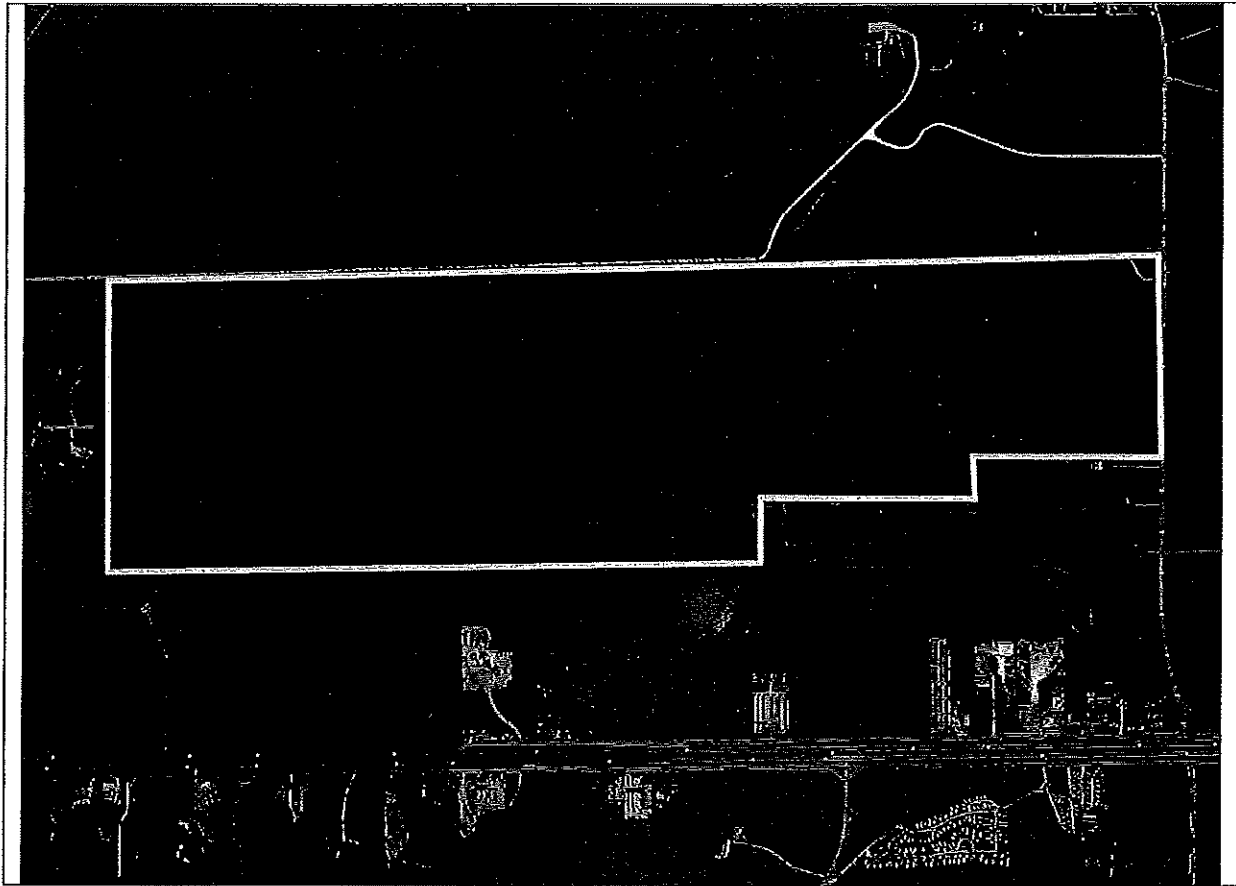
By: CHTEX of Texas, Inc.,  
a Delaware corporation  
Its General Partner

By:   
Name: Adib Khary  
Title: Assistant Secretary

Date: March 1<sup>st</sup>, 2020



**EXHIBIT A  
PROPERTY**



**Agreement Regarding the Dissolution of the NEU Community Bastrop Public  
Improvement District (n/k/a Viridian Public Improvement District)**

This Agreement Regarding the Dissolution of the NEU Community Bastrop Public Improvement District (n/k/a Viridian Public Improvement District) (the "Agreement") is entered into on this 10<sup>th</sup> day of March, 2021 by Continental Homes of Texas, L.P., a Texas limited partnership ("Owner") and the City of Bastrop, Texas (the "City"). The Owner and the City are hereinafter sometimes referred to collectively as the "Parties".

**Whereas**, David K. Grassel ("Original Owner") has requested the City establish the NEU Community Bastrop Public Improvement District (n/k/a Viridian Public Improvement District) (the "District") in that certain Petition for the Creation of a Public Improvement District to Finance Certain Improvements to NEU Community Bastrop Subdivision (the "Petition");

**Whereas**, since the Original Owner's submission of the Petition to the City, Owner has acquired the Property (defined below);

**Whereas**, it is contemplated that the City will approve the formation of the District over the property depicted in **Exhibit A**, attached hereto and incorporated herein (the "Property") for all purposes by a resolution (a "Resolution");

**Whereas**, the Owner, or Owner's successors or assigns, will request the City to levy special assessments within the District and issue, or cause to be issued, bonds to assist with the financing of certain public improvements identified in the Resolution (the "PID Bonds"); and

**Whereas**, the parties desire to provide for the dissolution of the District if special assessments are not levied or the PID Bonds are not issued by the deadline set forth herein;

**NOW, THEREFORE**, for and in consideration of the above recitals and the terms, conditions and agreements stated in this Agreement, the Parties agree as follows:

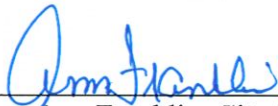
1. The Owner agrees that this Agreement constitutes Owner's petition to dissolve the District under Section 372.011, Texas Local Government Code, and the City is hereby authorized to dissolve the District, in the event that the first issuance of PID Bonds or a levy of special assessments does not occur by September 30, 2023 (the "Authorization") or upon the earlier written request of Owner. The Owner will not oppose the City's dissolution of the District undertaken in accordance with this Agreement, and will cooperate with the City to cause the District to be dissolved. The Authorization shall terminate and expire upon the earlier of (i) the levy of special assessments or (ii) the first issuance of the PID Bonds.
2. This Agreement shall be a covenant running with the land and shall be binding upon future owners of the Property or portions thereof and shall further be binding upon and inure to the benefit of the Parties, their successors, and assigns.


3. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws provisions, and venue shall lie in Bastrop County, Texas.
4. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement and this Agreement is effective as of the first date indicated above.

**CITY:**  
**City of Bastrop**

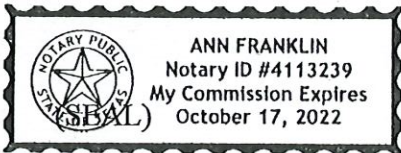
Attest:


By:   
Ann Franklin, City Secretary

By:   
Connie Schroeder, Mayor

THE STATE OF TEXAS           §  
COUNTY OF BASTROP       §

This instrument was acknowledged before me on this 10<sup>th</sup> day of March, 2021, by Connie Schroeder, Mayor of the City of Bastrop, Texas on behalf of said City.



  
Notary Public, State of Texas

**OWNER:**

Continental Homes of Texas, L.P., (a Texas limited partnership)

By: CHTEX of Texas, Inc.  
(a Delaware corporation)  
Its General Partner

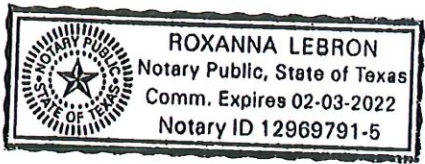
By: [Signature]  
Name: Adib Khoury  
Title: Assistant Secretary

STATE OF TEXAS                                   §  
  §  
COUNTY OF WILLIAMSON                   §

This instrument was acknowledged before me this 2 day of March, 2021, by Adib Khoury, the Assistant Secretary of CHTEX of Texas, Inc., a Delaware corporation, General Partner of Continental Homes of Texas, L.P., a Texas limited partnership, on behalf of said corporation and said limited partnership.

[Signature]  
\_\_\_\_\_  
Notary Public, State of Texas

[Seal]



**Exhibit "A"**

**The Property**

