

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN CITY OF BASTROP, TEXAS, AND
CONTINENTAL HOMES OF TEXAS, L.P.**

This First Amendment to the Development Agreement (this “**First Amendment**”) is made and entered into by and between the **City of Bastrop**, a Texas home-rule municipal corporation (the “**City**”), and **Continental Homes of Texas, L.P.**, a Texas limited partnership (“**Owner**”). The City and the Owner are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.” The Parties hereby contract, covenant and agree as follows.

RECITALS

WHEREAS, the City and Owner entered into that certain Viridian Development Agreement (the “**Agreement**”) on or about July 13, 2021, regarding the development and annexation of certain property described in the Agreement as adopted by City Council Resolution No. R-2021-65; and

WHEREAS, the defined terms as used in the Agreement shall also apply to this First Amendment; and

WHEREAS, the City and Owner desire to modify the Agreement to account for changes in circumstances and to provide additional clarification of the Parties’ respective responsibilities relating to certain offsite Wastewater Facilities for the development referred to in Sections 6.01, 6.02, and Exhibit “E” of the Agreement; and

WHEREAS, Section 15.06 of the Agreement allows for an amendment to the Agreement provided that the written amendment is approved by the City Council of the City and executed by the Parties.

NOW, THEREFORE, in exchange for the mutual promises and consideration herein expressed, other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, and subject to the terms and conditions of this First Amendment, the Parties agree to modify the Agreement as follows:

- A. Exhibit.** A new “**Exhibit E**” to the Agreement is hereby included, to show the updated design and location of the offsite Wastewater Facilities referenced in Section 6.01. The new “**Exhibit E**” is attached to this First Amendment as “**Attachment One**” and hereby supersedes and replaces Exhibit E to the Agreement.
- B. Amendment to Section 6.01.** Section 6.01 of the Agreement is hereby amended, by repealing and replacing the section in its entirety, to read as follows:

Section 6.01 Wastewater Facilities. The Owner will design and partially contribute to the construction costs of the Offsite Wastewater Facilities, as more particularly described on Exhibit "E" attached hereto (the "**Offsite Wastewater Facilities**"). The Owner shall pay all

costs associated with the planning, design, and engineering for the Offsite Wastewater Facilities. The City shall manage and contract directly for the construction of the Offsite Wastewater Facilities as part of its obligations under this Agreement. The estimated probable construction cost of the Offsite Wastewater Facilities is \$3,200,000.00 in total. The Owner shall contribute \$211,570.00 towards the cost of construction of the Offsite Wastewater Facilities. The Owner's contribution ("**Owner's Contribution**") shall be paid to the City within thirty (30) days of written notice to the Owner from the City that the City has executed a construction contract for the Offsite Wastewater Facilities. The City shall apply the Owner's contribution towards the cost of construction and the City shall be responsible for the remainder of the cost of construction of the Offsite Wastewater Facilities.

The Owner will design and construct the Onsite Wastewater Facilities (herein so called) on the Property, in accordance with the approved public improvement plans and public improvement plan agreements for the development (as approved in City Council Resolution Nos. R-2021-81, R-2021-82, and R-2021-83) (the "**Approved Wastewater Plans**"). The Owner will design and construct a lift station onsite with a force main connecting to the City's existing offsite gravity wastewater facilities as depicted on Exhibit "E" attached hereto. Upon the City's completion of the new Wastewater Treatment Plant (Permit No. WQ001 1076002), the City agrees that it will have sufficient capacity to serve the entire Project. Upon payment of all tap and impact fees (approximately 1,600 LUEs) wastewater service will be reserved for the Project. The City acknowledges and agrees that impact fees will be paid in phases over time as the Project is developed. Approval of any subdivision plat of land within the Project shall include an engineering analysis by the City that sufficient wastewater capacity is available to serve the platted lots at the time of such plat approval.

All Onsite Wastewater Facilities and the Offsite Wastewater Facilities (collectively, the "**Wastewater Facilities**") required to serve the Project shall be designed and built to the City's construction standards and in conformance with all rules, regulations and ordinances related to the construction and extension of wastewater utilities in effect at the time of submittal of construction plans and shall be subject to review and inspection by the City prior to acceptance.

The City hereby agrees to assist the Owner obtain any and all necessary easements required for the installation of any of the Offsite Wastewater Facilities that provide a regional benefit to the City and its residents accruing from such Offsite Wastewater Facilities. The City may use its authority to acquire any such necessary easements by utilizing the City's power of eminent domain, and, to the extent necessary, to promptly initiate and diligently pursue the condemnation of the easements in question.

In the event that (i) the City has not completed the Offsite Wastewater Improvements prior to November 1, 2024, and (ii) the Owner requires wastewater service for any portion of the Property after completion of the Onsite Wastewater Improvements, but prior to the City's completion of the Offsite Wastewater Improvements, then the City shall provide pump and haul wastewater service to the Property at the City's expense until such time as the Wastewater Facilities are complete and operational; provided, however, that the City's expenses to provide such pump and haul wastewater service shall not exceed \$200,000.00 in

total, and that the Owner shall be solely responsible for any further expenses for pump and haul in excess of such amount.

- C. **Amendment to Section 6.02.** Section 6.02 of the Agreement is hereby amended, by repealing and replacing the section in its entirety, to read as follows:

Section 6.02 Conveyance of Onsite Wastewater Facilities. Upon Owner's completion of construction of the onsite Wastewater Facilities, and the City's acceptance of such Onsite Wastewater Facilities, the Owner will convey the Onsite Wastewater Facilities to the City, on forms approved by the City and at no cost to the City, subject to the City's obligation to provide wastewater service to the Project. The City agrees that its acceptance of such Onsite Wastewater Facilities and the related assignments will not be unreasonably withheld, conditioned or delayed as long as the Onsite Wastewater Facilities have been constructed in accordance with Approved Wastewater Plans. Upon such conveyance, acceptance, and the Owner's providing a maintenance bond for two years, the City agrees to operate and maintain such Onsite Wastewater Facilities to provide service to the Project in accordance with this Agreement.

D. **General Provisions.**

1. **Interpretation of this First Amendment.** This First Amendment supersedes all prior agreements and understandings (oral and written) between the Parties with respect to the subject matter hereof to the extent in conflict therewith. The provisions of this First Amendment, including, without limitation, all exhibits attached to this First Amendment, are hereby incorporated into and made a part of the Agreement. As modified in this First Amendment, the terms and conditions of the Agreement shall continue in full force and effect.
2. **Counterparts.** This First Amendment may be executed simultaneously in one or more counterparts (including, without limitation, counterparts transmitted by facsimile or other electronic means (*e.g.*, PDF via email)), each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.
3. **Severability.** The provisions of this First Amendment and the Agreement, as amended, are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this First Amendment and the Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this First Amendment and the Agreement to other persons or circumstances shall be not be affected thereby.
4. **Effective Date.** The Effective Date of this First Amendment is the date upon which it is finally executed by the Parties.

[Signature pages follow]

EXECUTED in multiple originals, and in full force and effect as of the Effective Date.

CITY:

City of Bastrop, Texas
a Texas home-rule municipal corporation

by: _____
Sylvia Carrillo-Trevino, City Manager

THE STATE OF TEXAS

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COUNTY OF BASTROP

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This instrument was acknowledged before me on this, the ____ day of _____, 2024, by *Sylvia Carrillo-Trevino*, City Manager of the City of Bastrop, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public, State of Texas

ATTACHMENT ONE

