

UTILITY SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Utility Service Agreement (“Agreement”) is entered into by and between the San Antonio Water System Board of Trustees, through Resolution Number 03-162, acting by and through its President/Chief Executive Officer (“SAWS”) and Continental Homes of Texas, L.P. (“Developer”) together the Parties (“Parties”).

Recitals

Whereas, Developer has requested that SAWS provide sanitary sewer service to an approximate 127 acre tract of land, (the Continental Homes Tract), such tract being and more particularly described in Attachment III, as accepted by SAWS; and

Whereas, SAWS desires to provide such services to the Developer pursuant to the SAWS Utility Service Regulations and as amended, and all applicable local, state, and federal regulation;

Now Therefore, The Parties Hereto Agree To The Following Terms and Conditions:

1.00 Interpretation of Agreement.

The Parties acknowledge that the utility service(s) provided pursuant to this Agreement shall be provided in accordance with the SAWS Utility Service Regulations, Design Criteria, Schedules, Attachments and Instruments thereto, as amended (together “USR”). In the event the specific terms of this Agreement are in conflict with the USR, the specific terms of this Agreement shall apply. The above notwithstanding, in order for such specific conflicting term to prevail, such conflict must be so noted in the Agreement. The Parties further acknowledge that in the event the City Council of the City of San Antonio amends or revises an ordinance/regulation regarding impact fees, this Agreement is subject to such amendment or revision.

2.00 Obligation Conditioned.

The obligation of SAWS to provide the utility services, which are the subject of this Agreement, is conditioned upon present rules, regulations and statutes of the United States of America and the State of Texas and any court order that directly affects the San Antonio Water System’s Regional Water Production and Distribution System and/or Regional Wastewater Transportation and Treatment System and/or the utility infrastructure directly servicing the Tract. Developer acknowledges that if the rules, regulations and statutes of the United States of America and/or the State of Texas that are in effect upon the execution date of this Agreement are ever revised or amended to such an extent that SAWS becomes incapable of, or prevented from, providing the utility services(s) which are the subject of this Agreement, then no liability of any nature is to be

imposed upon SAWS as a result of SAWS' compliance with such legal or regulatory mandates. SAWS agrees that it will use its best efforts to prevent the enactment of such legal or regulatory mandates.

3.00 Term.

3.01 If Developer meets the requirements set out in G.C.19.00 herein, the provisions of this Agreement shall remain in full force and effect for a maximum period of fifteen (15) years from the Effective Date of this Agreement. In order for certain conditions to survive the expiration of the fifteen (15) year term, the Developer must (i) pay all impact fees for the total number of EDU's required for the development covered by this Agreement at the then-current rate, and (ii) complete all infrastructure requirements including off-site extensions of this Agreement.

3.02 In the event Developer has not completed the requirements stated herein, Developer understands and agrees that should he desire to complete the development project that is the subject of this Agreement, he must enter into a new Utility Service Agreement with SAWS pursuant to the then current Utility Service Regulations.

3.03 In the event the Developer has completed these requirements prior to expiration of the fifteen (15) year term, the following conditions will survive termination of this Agreement:

- (i) SAWS' recognition of the EDU's of capacity for the development which is the subject of the Agreement as guaranteed capacity.
- (ii) SAWS' continued recognition of impact fee credits previously earned by the Developer pursuant to Sections 15.8 and 15.9 of the Utility Service Regulations.
- (iii) SAWS continued provision of the utility services subject to the Agreement to retail customers located in the tract, so long as such customers pay for the services and comply with the regulations applicable to individual customers.

4.00 Entire Agreement.

The following documents attached hereto and incorporated herein are as fully a part of this Agreement as if herein repeated in full, together with this Agreement, comprise the Agreement in its entirety:

Attachment I:	General Conditions
Attachment II:	Special Conditions
Attachment III:	Description of Tract
Attachment IV:	(If necessary) Board Summary & Recommendation and Resolution
Attachment V:	Developer Water and/or Wastewater Master Plan
Attachment VI:	Engineering Study
Attachment VII:	(If necessary) Lift Station & Force Main Supplemental Agreement
Attachment VIII:	(If necessary) Water Recycling and Conservation Plan

5.00 Developer's Obligations.

The Developer acknowledges and agrees that any guaranteed capacity earned pursuant to this Agreement shall run with the land and shall be an appurtenance to the Tract. The Developer acknowledges that recordation of this Agreement in the Real Property Records of the County in which the Tract is located within thirty-six months of the Effective Date of this Agreement is required; otherwise the Agreement will terminate. Developer shall record the Agreement and supply the Director with a recorded copy. The Developer shall maintain records of EDU's remaining on the Tract pursuant to the approved Developer Master Plan. Developer shall provide SAWS with such records upon SAWS written request. Developer further agrees to defend, indemnify and hold harmless SAWS and its successor and assigns from the claims of third parties arising out of SAWS granting of any remaining guaranteed capacity earned pursuant to this Agreement to Developer's subsequent purchasers, successors and assigns.

6.00 Notices.

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties shall be deemed sufficiently given or furnished or served if in writing and deposited in the United States mail, registered or certified, return receipt requested, addressed to such party at the address set forth below:

IF TO SAN ANTONIO WATER SYSTEM:

**SAN ANTONIO WATER SYSTEM
POST OFFICE BOX 2449
SAN ANTONIO, TEXAS 78298-2449
ATTN: KELLEY NEUMANN, P.E., DIRECTOR
INFRASTRUCTURE DEVELOPMENT**

IF TO DEVELOPER:

**CONTINENTAL HOMES OF TEXAS, L.P.
211 N. LOOP 1604 EAST, SUITE 130
SAN ANTONIO, TEXAS 78232
ATTN: BILL LAFORCE**

7.00 Severability.

If for any reason any one or more paragraph of this Agreement are held legally invalid, such judgment shall not prejudice, affect impair or invalidate the remaining paragraphs of the Agreement as a whole, but shall be confined to the specific sections, clauses, or paragraphs of this contract held legally invalid.

8.00 Effective Date.

The Effective Date of this Agreement shall be the date signed by the authorized representative of the San Antonio Water System.

ACCEPTED AND AGREED TO IN ALL THINGS:

San Antonio Water System

Developer

Continental Homes of Texas, L.P.

by CHTEX of Texas, Inc

Jerry L. Berry

By: Jerry L. Berry

By: [Signature]

Title: Interim Mgr, DED

Title: Assistant Secretary

Date: 4/6/04

Date: 3/24/04

ACKNOWLEDGEMENTS

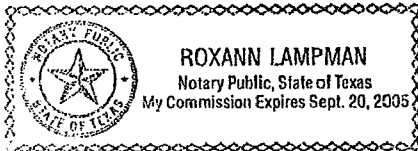
STATE OF TEXAS, COUNTY OF BEXAR

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BEFORE ME, the undersigned Notary Public, on this day personally appeared JERRY L. BERRY known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as INTERIM MANAGER, DED for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6TH day of APRIL, 2004.

(seal)



[Signature]
Notary Public

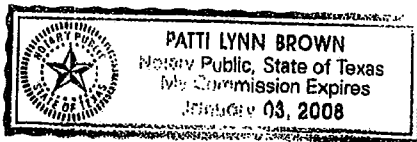
STATE OF TEXAS, COUNTY OF BEXAR

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BEFORE ME, the undersigned Notary Public, on this day personally appeared Timothy D Pruski, Asst. Sec. known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as Timothy D. Pruski, Asst. Sec. for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of March, 2004.

(seal)



[Signature]
Notary Public

