

**EXHIBIT****"A"****UTILITY REIMBURSEMENT AGREEMENT**

THIS UTILITY REIMBURSEMENT AGREEMENT ("the Agreement") is made by and between the CITY OF ROUND ROCK, TEXAS, (the "City") and CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership (the "Developer") on this \_\_\_\_ day of \_\_\_\_\_, 2022.

**RECITALS**

**WHEREAS**, (i) Developer, (ii) Century Land Holdings II, LLC, a Colorado limited liability company ("Century"), and (iii) Avery Ranch Company, Ltd., a Texas limited partnership ("ARC"), Marta C. Avery, Trustee of the Marta C. Avery Exempt Trust; John S. Avery, Trustee of the John S. Avery Exempt Trust; A. Nelson Avery, Trustee of the A. Nelson Avery Exempt Trust; L. Christina Avery Fell, Trustee of the L. Christina Avery Fell Exempt Trust, are proposing a development, "Avery Centre East," (the "Project") located east of North A.W. Grimes Boulevard and south of CR 112, located within the City of Round Rock, as shown in Exhibit "A" ("Property"), attached hereto and incorporated herein by reference for all purposes; and

**WHEREAS**, the Developer has agreed at the request of the City to upsize a water main and upsize a pressure reducing valve (PRV) and vault for the Project; and

**WHEREAS**, the City agrees to reimburse the Developer for the oversizing of the water main and PRV and vault as set forth herein;

**NOW THEREFORE**, the parties hereto agree as follows:

**ARTICLE I**

1. Recitals. The City hereby finds that the Recitals stated above are true and correct.
2. Developer's Obligations. The Developer, in consideration for the City's reimbursement of oversizing the water main and the PRV and vault as set forth herein, agrees to the following:

- (a) The Developer shall oversize the water main in accordance with Article VI, Section 4-78, City of Round Rock Code of Ordinances (2018 Edition), and shall be reimbursed by the City in accordance with Section

4-78(e). The water main shall be a 24-inch diameter water main (oversized from 12 inches), as shown in Exhibit "B" attached hereto and incorporated herein by reference for all purposes.

- (b) The Developer shall oversize the PRV and vault to the specifications requested by the City. The PRV shall be a 16-inch PRV and vault (oversized from 8 inches), as shown in the attached Exhibit "B".
- (c) All construction plans for the oversizing of the PRV and vault shall be approved by the City.
- (d) The Developer shall publicly bid the construction of the oversized PRV and vault in accordance with all applicable legal requirements, including Chapter 49, *Texas Water Code*. The PRV and vault shall be bid both: 1) at the size required for the Project (regular sized PRV and vault); and 2) at the size required by the City (oversized PRV and vault). The contract shall be awarded by the Developer to the lowest responsible bidder.

3. City's Obligations. The City shall reimburse the Developer the difference between the cost of a regular sized PRV and vault needed to service the Project and the oversized PRV and vault required by the City, based on the bid amounts received from the lowest responsible bidder. The City agrees to reimburse the costs upon substantial completion of the PRV and vault.

## ARTICLE II

1. No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership of joint venture among parties. Neither party shall have any authority to act on behalf of the other party under any circumstances.

2. Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement

3. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as

such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If Intended for the City:

City of Round Rock, Texas  
Attention: Laurie Hadley  
City Manager  
221 E. Main Street  
Round Rock, Texas 78664

With a copy to:

City of Round Rock, Texas  
Attention: Stephan L. Sheets  
City Attorney  
309 E. Main Street  
Round Rock, Texas 78664

If intended for the Developer:

Continental Homes of Texas, L.P.  
Attn: John A. Sparrow  
10700 Pecan Park Blvd., Suite 400  
Austin, Texas 78750  
Email: JASparrow@drhorton.com

With a copy to:

Timothy C. Taylor  
Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 7801-4042

Avery Ranch Company Ltd. & LSA Trust  
Attn: John S. Avery, Sr.  
2803 Pecos Street  
Austin, Texas 78703

John S. Avery, Jr.  
740 CR 278  
Liberty Hill, Texas 78642

Armbrust & Brown, PLLC  
Attn: Kevin M. Flahive  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701

4. Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this agreement. There is no collateral oral or written agreement between parties that in any matter relates to the subject matter of this Agreement.

5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning the Agreement shall be in Williamson County, Texas.

6. Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

7. Severability. In the event one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal invalid or unenforceable a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8. Assignment. This Agreement may not be assigned without the written consent of the City. Provided, however, the City will not unreasonably withhold, condition, or delay Developer's assignment of this Agreement to ARC and/or to Century or to Forestar (USA) Real Estate Group Inc.

9. Authorized to Bind. The persons who execute their signatures to this Agreement and any certifications related to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

10. Counterparts. This Agreement may execute in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

[Signatures on the following page.]

Executed on this 11 day of JANUARY, 2022.

**DEVELOPER:**

**CONTINENTAL HOMES OF TEXAS, L.P.**  
(a Texas limited partnership)

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

By:   
Name: John A. Sparrow  
Title: Assistant Secretary

**CITY:**

ROUND ROCK, TEXAS

By: \_\_\_\_\_  
Craig Morgan, Mayor

Attest:

\_\_\_\_\_  
Sara White, City Clerk

# Exhibit "A"

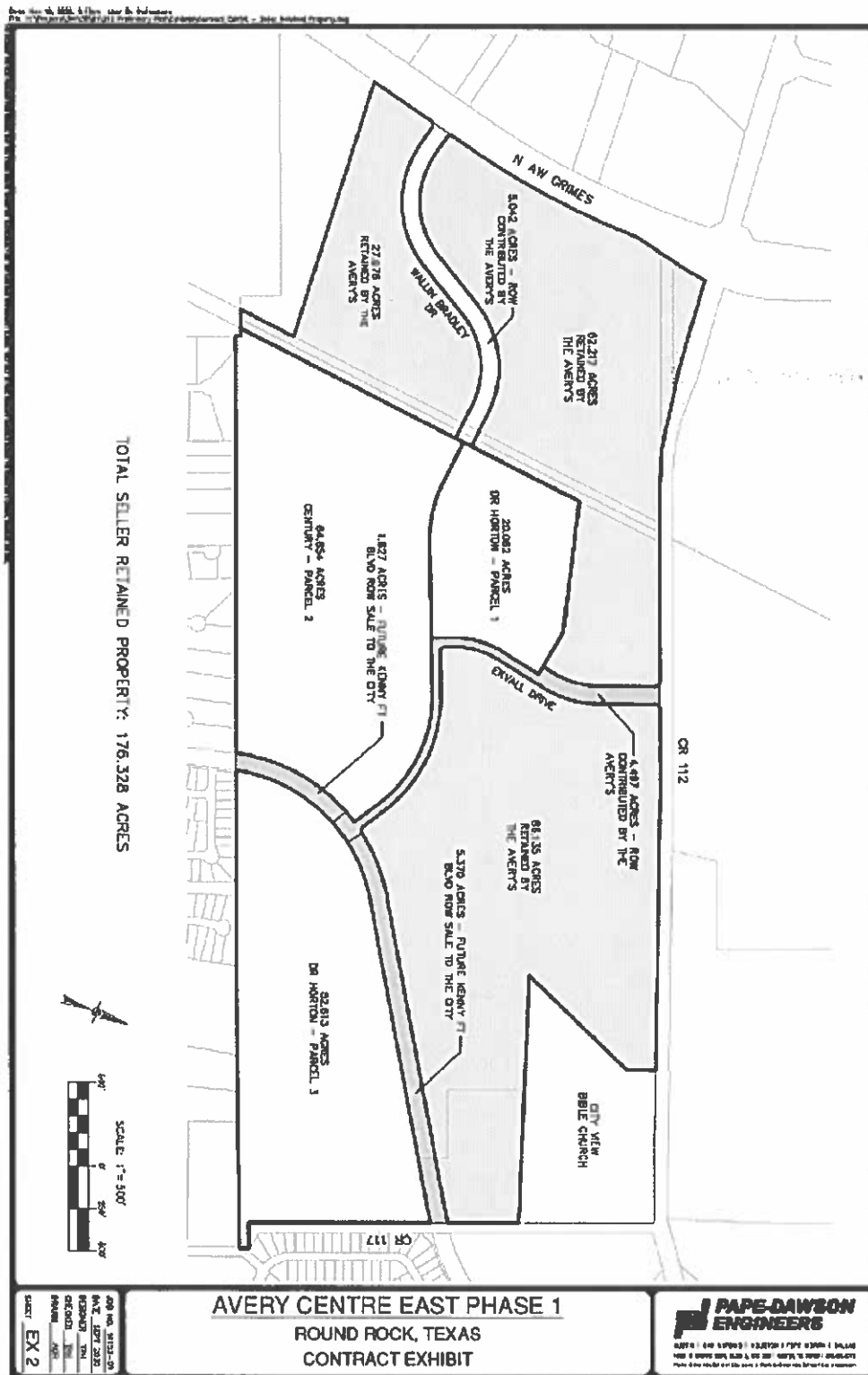


Exhibit "A"

UTILITY REIMBURSEMENT AGREEMENT  
29719467v.4

Detail of PRV and Vault:

