



RESOLUTION 02-01-2020

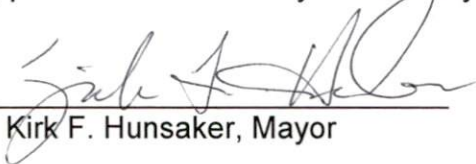
**A RESOLUTION APPROVING A THIRD AMENDMENT TO THE
AHLIN ANNEXATION AND DEVELOPMENT AGREEMENT WITH
FORESTAR (USA) REAL ESTATE INC. REGARDING THE
SETBACK MODIFICATIONS FOR THE FOOTHILL VILLAGE
DEVELOPMENT**

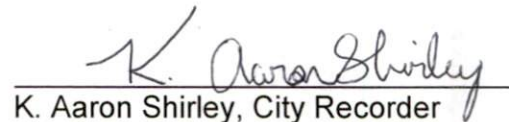
BE IT HEREBY RESOLVED:

SECTION 1: The attached document represents an amendment to the Ahlin Annexation and Development Agreement with Forestar (USA) Real Estate Inc. related to the Foothill Village Development.

SECTION 2: This Resolution shall become effective upon passage.

Approved on this 4th day of February 2020.


Kirk F. Hunsaker, Mayor


K. Aaron Shirley, City Recorder

**THIRD AMENDMENT TO
AHLIN ANNEXATION AND DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO AHLIN ANNEXATION AND DEVELOPMENT AGREEMENT (this "Amendment") is entered into as of the 6 day of March, 2020 by and between FORESTAR (USA) REAL ESTATE GROUP INC., a Delaware corporation, herein referred to as ("Forestar") and SANTAQUIN CITY, a fourth class city of the State of Utah ("City" or "Santaquin") (together, the "Parties").

RECITALS

A. WHEREAS, the Annexation and Development Agreement for the Ahlin Annexation Project Area (the "Development Agreement") was entered into October 18, 2000 and was recorded in the official records of the Utah County Recorder December 11, 2000 as Entry No. 97996:2000; and

B. WHEREAS, the First Amendment to the Development Agreement (the "First Amendment") was entered into March 5, 2014 and was recorded in the official records of the Utah County Recorder March 6, 2014 as Entry No. 15215:2014; and

C. WHEREAS, the Second Amendment to the Development Agreement (the "Second Amendment") was entered into January 5, 2019 and was recorded in the official records of the Utah County Recorder as Entry No. 12603:2019; and

D. WHEREAS, Forestar has acquired title to all of the undeveloped real property that is described in the Development Agreement, except for approximately 24 acres that contains the City's Pressurized Irrigation Pond, ("the Land"); and

E. WHEREAS, the Parties desire to enter into this Amendment to clarify and modify certain development parameters for the Land as more particularly set forth herein; and

F. WHEREAS, the Parties acknowledge that this Amendment does not modify any provisions of the Amended Agreement affecting any part of the Ahlin Annexation other than the Land; and

G. WHEREAS, Forestar has agreed to cooperate with the City as reasonably necessary to comply with the terms of the Amended Agreement and this Third Amendment, and agree to be bound by the terms of this Third Amendment, as evidenced by their signatures below; and

H. WHEREAS, Forestar intends to take all reasonable steps to develop the Land according to the Amended Agreement and this Third Amendment; and

I. WHEREAS, this Amendment shall modify the Amended Agreement with respect to the Land only as specifically set forth herein, and all provisions of the



Amended Agreement which are not specifically amended herein shall continue in full force and effect.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

SECTION I. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Amendment that is not otherwise defined herein shall have the meaning given in the Amended Agreement. Terms defined herein are as follows:

1.1 **“Amended Agreement”** means the Development Agreement, together with the First Amendment to the Development Agreement and the Second Amendment to the Development Agreement, as identified above.

1.2 **“Developer”** means any individual or entity, its assigns and successors in interest, whether in whole or in part, which may or may not include an Owner, that seeks approval of a final plat for subdivision of development of all or any portion of the Land or the establishment of any Project.

1.3 **“Frontage Road”** means the road that is described in the Development Agreement that is to be constructed on the Land and adjacent to I-15 and which shall run from Center Street/Canyon Road to the South Santaquin Exit to I-15 (Exit 242).

1.4 **“Owner”** for purposes of this Amendment means Forestar who owns all of the Land.

SECTION II. SPECIFIC AMENDMENTS

The Amended Agreement is hereby specifically amended as follows:

2.1 **Subdivision Setbacks.** The Parties agree that the subdivision setback requirements in the future development of the Land for residential lots with a depth of one hundred ten (110) feet or less, are hereby modified as set forth below. The depth of a lot shall be measured from the front property line to the rear property line, except in determining lot depth measurements of corner lots, the measurements shall be taken to and from the point created by the extension of the corner lot's streetside property lines to their intersection.

2.1.1 Modified Front Setback. Front setbacks shall be modified from thirty (30) feet to eighteen (18) feet from the property line to the front of the home or porch, twenty (20) feet from the property line to a two-car garage, and twenty-two (22) feet from the property line to a third-

car garage, as depicted in the diagram titled “Foothill Village – Setbacks,” which is attached hereto as Exhibit A.

2.1.2 **Modified Rear Setback.** Rear setback shall be modified from twenty-five (25) feet to twenty (20) feet, as depicted in Exhibit A.

2.1.3 **Modified Side Setback.** Setbacks for side yards adjacent to a street shall be revised from twenty-five (25) feet to twenty (20) feet. Setbacks for side yards not adjacent to a street shall be modified from ten (10) feet to five (5) feet on the side of the home with the garage, as depicted in Exhibit A.

2.2 Off-Street Parking. In partial consideration of the modification of the setback requirements outlined in section 2.1 above, the Parties agree that prior to issuance of a certificate of occupancy for any structure that does not include a three-car garage and is constructed on a residential lot with any setback that has been reduced pursuant to Section 2.1, Owner shall construct a third car driveway on the lot to provide for parking a third vehicle. The third car driveway shall be constructed of compacted road base, asphalt, concrete, or other hard surface approved by the City.

2.3 Construction of North Frontage Road. The Parties agree that, although not part of the Amended Agreement, the construction of that portion of the Frontage Road from the Land to Center Street/Canyon Road (“the North Frontage Road”) will significantly benefit both Forestar and the City, by improving accessibility, traffic flow and the health, safety and welfare of the residents of the City; and therefore agree to cooperate in the acquisition of property, design and construction of the North Frontage Road pursuant to the terms of a separate written agreement (the “North Frontage Road Agreement”). The Parties agree to negotiate in good faith the specific terms of the North Frontage Road Agreement which shall include the below high-level concepts:

2.3.1 **City Responsibilities.** The City will acquire sufficient real property, rights-of-way and easements necessary to the construction of the North Frontage Road; and will arrange and pay for all costs of the engineering and design.

2.3.2 **Forestar Responsibilities.** Forestar will cause to be constructed the North Frontage Road in compliance with the budget and drawings and specifications attached to the North Frontage Road Agreement.

2.3.3 **Reimbursement of Costs.** City shall reimburse Forestar for costs incurred by Forestar in the construction of the North Frontage Road through Transportation Impact Fees and/or similar agreed upon means as provided in the North Frontage Road Agreement.

2.4 City Improvements. All improvements constructed on the Land shall comply with all applicable City and State regulations.

2.5 **Indemnification.** Owners hereby agree to indemnify and hold harmless the City and its officers, agents and employs from any and all damages and claims of third parties arising from or related to this Amendment.

SECTION III. MISCELLANEOUS

3.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Amendment, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Amendment as if fully set forth herein.

3.2 **Indemnification.** Each Party hereby agrees to indemnify and hold harmless the other Party and its officers, agents and employs from any and all damages and claims of third parties arising from the acts or omissions of the other party related to this Amendment.

3.3 **Severability.** If any provision of this Amendment or the application of any provision of this Amendment to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Amendment shall continue in full force and effect.

3.4 **Construction.** This Amendment has been reviewed and revised by legal counsel for Owner and the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Amendment.

3.5 **Further Assurances, Documents and Acts.** Each Party hereto agrees to cooperate in good faith with the others, and to execute and deliver such further documents and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Amendment and the actions contemplated hereby. All provisions and requirements of this Amendment shall be carried out by each Party as allowed by law.

3.6 **Assignment.** Neither this Amendment nor any of the provisions, terms or conditions hereof can be assigned by the Developer or the Owner to any other party, individual or entity without assigning the rights as well as the obligations under this Amendment and complying with the other provisions herein concerning assignments. The rights of the City under this Amendment shall not be assigned, but the City is authorized to enter into a contract with a third party to perform obligations of the City to operate and maintain any infrastructure improvement so long as such party adequately and reasonably maintains and operates such facility or improvement.

3.7 Amendment to Run with the Land. A Memorandum of this Amendment in a form mutually agreed to by the Parties shall be recorded against the Land and shall be deemed to run with the land.

3.8 Governing Law and Dispute Resolution. This Amendment shall be governed by and construed in accordance with the laws of the State of Utah. Any and all disputes arising out of or related to this Amendment or the Parties' performance hereunder shall be submitted to mediation before a mutually-acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The Parties shall: (i) mediate in good faith; (ii) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the Parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties to the dispute. Venue of the mediation shall be the State of Utah. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce in whole or in part this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action. In the event any dispute arising hereunder is not resolved through mediation, the parties to that dispute may pursue any other remedy allowed by law.

3.9 Notices. Any notice or communication required hereunder between the Parties must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the Party to whom it is addressed. If given by facsimile to the address and number for such Party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

If to City to:

With a copy to:

K. Aaron Shirley	Nielsen & Senior
Santaquin City Recorder	1145 South 800 East, Suite 110

275 West Main Street	Orem, Utah 84097
Santaquin, Utah 84655	Email: bbr@ns-law.com
Facsimile: (801) 754-3526	Attention: Brett B. Rich

If to Forestar to:

With a copy to:

Forestar (USA) Real Estate Group Inc.	DR Horton Inc.
2221 E. Lamar Blvd., Ste. 790	12351 Gateway Park Place
Arlington, Texas 76006	Suite D100
Attention: Matthew Stark, Senior Vice President – Legal	Draper, Utah 84020
Telephone: (512) 433-5212	Attention: Boyd Martin – Division President

3.10 No Third Party Beneficiary. This Amendment is made and entered into for the sole protection and benefit of the Parties and their assigns, subject to the provisions of the Amended Agreement. No other Party shall have any right of action based upon any provision of this Amendment whether as third party beneficiary or otherwise.

3.11 Counterparts and Exhibits. This Third Amendment may be executed in duplicate counterparts, each of which is deemed to be an original. This Amendment consists of ____ () pages, and an additional one (1) exhibit, which together constitute the entire understanding and agreement of the Parties to this Amendment. The following exhibit is attached to this Amendment and incorporated herein for all purposes:

Exhibit A Foothill Village - Setbacks

3.12 Duration. This Amendment shall continue in force and effect until all obligations under the Development Agreement relating to the Land have been satisfied.

3.13 Acknowledgment. By its signature below Owner acknowledges that the property owned by such Owner at the time of execution of this Amendment shall be subject to all of the terms and conditions of this Amendment upon execution by all Parties.

(Signature Page on Next Page)

IN WITNESS WHEREOF, this Amendment has been executed by the Parties by duly authorized persons, by the City of Santaquin, acting by and through its City Council and by Forestar (USA) Real Estate Group Inc., by a duly authorized representative as of the 6 day of March, 2020.

SANTAQUIN CITY

Kirk F Hunsaker
Kirk F Hunsaker, Mayor

ATTEST:

By: *K. Aaron Shirley*
K. Aaron Shirley, City Recorder

FORESTAR (USA) REAL ESTATE

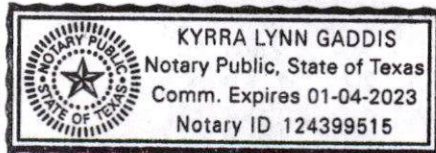
GROUP INC.:

By: *Thomas H. Burleson*
Name: Thomas H. Burleson
Its: Senior Vice President

STATE OF TEXAS)

COUNTY OF TARRANT)

On this 6 day of March 2020, personally appeared before me Thomas H. Burleson as SVP of Forestar (USA) Real Estate Group Inc., personally known to me, who after being duly sworn acknowledged to me that he executed this document with the authorization of, and on behalf of said corporation.



Kyrra Lynn Gaddis
Notary Public

EXHIBIT A: Legal Description of Property and Illustrative Map

**BEGINNING AT A POINT WHICH IS THE EAST QUARTER CORNER OF SECTION 11,
TOWNSHIP 10 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN;**

Thence, S 89° 47' 40" W for a distance of 239.58 feet to a point on a line.
 Thence, S 89° 19' 39" W for a distance of 325.02 feet to a point on a line.
 Thence, S 89° 19' 39" W for a distance of 335.78 feet to a point on a line.
 Thence, S 00° 40' 20" E for a distance of 264.50 feet to a point on a line.
 Thence, S 41° 42' 33" W for a distance of 316.44 feet to a point on a line.
 Thence, S 48° 02' 03" W for a distance of 316.05 feet to a point on a line.
 Thence, S 45° 37' 12" W for a distance of 55.00 feet to a point on a line.
 Thence, S 44° 22' 48" E for a distance of 47.27 feet to a point on a line.
 Thence, S 45° 37' 12" W for a distance of 130.04 feet to a point on a line.
 Thence, S 44° 22' 48" E for a distance of 220.69 feet to a point on a line.
 Thence, S 44° 23' 46" W for a distance of 395.14 feet to the beginning of a non-tangential curve,
 Said curve turning to the left through 14° 50' 10", having a radius of 1027.50 feet, and whose long
 chord bears S 49° 00' 07" E for a distance of 265.32 feet to the beginning of a non-tangential curve.
 Said curve turning to the right through an angle of 02° 09' 15", having a radius of 972.50 feet, and
 whose long chord bears S 55° 20' 34" E for a distance of 36.56 feet to a point of intersection with a
 non-tangential line.
 Thence, N 44° 49' 50" E for a distance of 291.36 feet to a point on a line.
 Thence, N 53° 06' 21" E for a distance of 321.95 feet to a point on a line.
 Thence, S 36° 53' 39" E for a distance of 172.50 feet to a point on a line.
 Thence, N 53° 06' 21" E for a distance of 264.57 feet to the beginning of a curve,
 Said curve turning to the right through 15° 47' 01", having a radius of 140.00 feet, and whose long
 chord bears N 60° 59' 52" E for a distance of 38.45 feet to the beginning of a non-tangential curve.
 Said curve turning to the right through an angle of 21° 01' 46", having a radius of 140.00 feet, and
 whose long chord bears N 79° 24' 16" E for a distance of 51.10 feet.
 Thence, N 89° 55' 09" E for a distance of 474.49 feet to a point on a line.
 Thence, S 00° 04' 51" E for a distance of 464.29 feet to a point on a line.
 Thence, S 73° 03' 26" W for a distance of 128.60 feet to a point on a line.
 Thence, S 56° 34' 14" W for a distance of 50.85 feet to a point on a line.
 Thence, S 61° 49' 24" W for a distance of 52.69 feet to a point on a line.
 Thence, S 64° 23' 20" W for a distance of 56.55 feet to a point on a line.
 Thence, S 63° 49' 36" W for a distance of 44.08 feet to a point on a line.
 Thence, S 64° 00' 13" W for a distance of 48.34 feet to a point on a line.
 Thence, S 68° 54' 47" W for a distance of 95.15 feet to the beginning of a curve,
 Said curve turning to the left through 28° 33' 09", having a radius of 175.00 feet, and whose long
 chord bears S 54° 38' 02" W for a distance of 86.31 feet to the beginning of a non-tangential curve.
 Said curve turning to the right through 15° 09' 14", having a radius of 300.00 feet, and whose long
 chord bears S 47° 56' 04" W for a distance of 79.11 feet to the beginning of a non-tangential curve.
 Said curve turning to the left through 19° 53' 42", having a radius of 742.45 feet, and whose long
 chord bears S 45° 33' 50" W for a distance of 256.51 feet to the beginning of a non-tangential curve.
 Said curve turning to the right through an angle of 23° 43' 31", having a radius of 100.00 feet, and

whose long chord bears S 47° 28' 45" W for a distance of 41.11 feet.

Thence, S 59° 20' 30" W for a distance of 103.85 feet to a point on a line.

Thence, S 20° 42' 40" E for a distance of 3.86 feet to the beginning of a non-tangential curve, Said curve turning to the left through an angle of 32° 48' 22", having a radius of 350.00 feet, and whose long chord bears S 60° 33' 23" W for a distance of 197.67 feet to a point of intersection with a non-tangential line.

Thence, S 44° 19' 12" W for a distance of 197.86 feet to a point on a line.

Thence, S 45° 32' 43" W for a distance of 106.76 feet to a point on a line.

Thence, S 43° 57' 26" W for a distance of 116.68 feet to a point on a line.

Thence, S 45° 36' 14" W for a distance of 45.69 feet to a point on a line.

Thence, S 49° 04' 39" W for a distance of 39.99 feet to a point on a line.

Thence, S 56° 57' 14" W for a distance of 94.78 feet to a point on a line.

Thence, S 49° 40' 25" W for a distance of 45.06 feet to a point on a line.

Thence, S 41° 36' 34" W for a distance of 40.22 feet to a point on a line.

Thence, S 88° 42' 15" W for a distance of 1074.93 feet to a point on a line.

Thence, S 89° 24' 47" W for a distance of 1133.35 feet to a point on a line.

Thence, N 26° 21' 47" E for a distance of 32.80 feet to a point on a line.

Thence, N 44° 16' 46" W for a distance of 49.00 feet to a point on a line.

Thence, N 32° 41' 37" E for a distance of 51.14 feet to the beginning of a curve,

Said curve turning to the right through an angle of 06° 27' 31", having a radius of 11266.16 feet, and whose long chord bears N 35° 55' 22" E for a distance of 1269.29 feet to a point of intersection with a non-tangential line.

Thence, N 50° 50' 53" W for a distance of 73.00 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 08° 00' 59", having a radius of 11339.16 feet, and whose long chord bears N 43° 09' 37" E for a distance of 1585.20 feet to a point of intersection with a non-tangential line.

Thence, N 47° 40' 05" E for a distance of 502.14 feet to a point on a line.

Thence, N 47° 04' 41" E for a distance of 2167.59 feet to a point on a line.

thence S 00° 04' 32" E a distance of 1459.43 feet to the POINT OF BEGINNING

CONTAINS 143.22 ACRE MORE OR LESS

