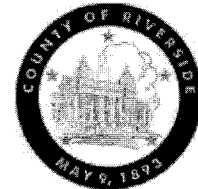


SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.15
(ID # 9112)

MEETING DATE:

Tuesday, April 9, 2019

FROM : TLMA-TRANSPORTATION:

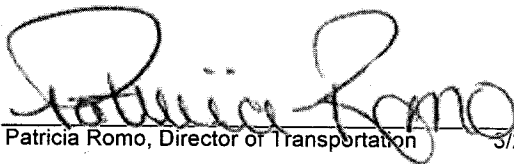
SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY-TRANSPORTATION:

Approval of the Second Assignment, Assumption and Amendment Agreement between the County of Riverside, Riverside County Flood Control and Water Conservation District, The Woods (Riverside) Venture, L.L.L.P. and Forestar (USA) Real Estate Group Inc. for Winchester Hills Line 2, Stage 1 (Tract No. 30809), Project No. 4-0-00576; District 3. [\$0] (Companion item to MT Item 9381)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Second Assignment, Assumption and Amendment Agreement by and between the County of Riverside (County), Riverside County Flood Control and Water Conservation District (District), The Woods (Riverside) Venture, L.L.L.P. (Assignor), and Forestar (USA) Real Estate Group Inc. (Assignee) and authorize the Chairman of the Board to execute the same on behalf of the County.

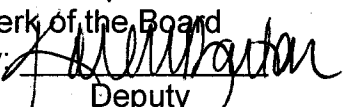
ACTION: Policy


Patricia Romo, Director of Transportation 3/27/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: April 9, 2019
xc: Transp., Flood

Kecia Harper
Clerk of the Board
By: 
Deputy

(Companion Item to 11.3)

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Developer Funded 100%. No General Funds will be used.			Budget Adjustment: No	
			For Fiscal Year: 18/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

The Second Assignment, Assumption and Amendment Agreement transfers the rights and responsibilities as established by the original cooperative agreement, executed on August 1, 2006 (Board Agenda Item No. 3.35) and the first Assignment, Assumption and Amendment Agreement, executed on December 15, 2015 (Board Agenda Item No. 3.36) from the Assignor to the Assignee

Once the Agreement is executed, the Assignee will assume responsibility for the construction of the drainage facilities as originally required as a condition of development for Tract No. 30809. Upon completion of construction, the District will assume ownership and responsibility for the operation and maintenance of the mainline storm drain systems that are greater than 36 inches in diameter. The Transportation Department will assume ownership and responsibility for the operation and maintenance of the project's associated storm drain appurtenances and lateral storm drains that are 36 inches or less in diameter located within County rights of way.

County Counsel has approved the Agreement as to legal form, and the Developer has executed the Agreement. A companion item appears on the Riverside County Flood Control and Water Conservation District Agenda this same date.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements is a requirement for the development of Tract No. 30809. The principal beneficiaries are the future property owners and residents of the project.

SUPPLEMENTAL:


Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of District maintained storm drain system will accrue to the District. Future operation and maintenance costs of the County maintained storm drain facilities located within the County right of way will accrue to County Transportation Department.

ATTACHMENTS:

- Vicinity Map
- Storm Drain Exhibit
- Second Assignment, Assumption and Amendment Agreement

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA



Gregory V. Priapros, Director County Counsel 3/29/2019

SECOND ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT
TO COOPERATIVE AGREEMENT

Winchester Hills Line 2, Stage 1
Project No. 4-0-00576
(Tract No. 30809)

This Second Assignment, Assumption and Amendment Agreement ("SECOND ASSIGNMENT") is entered into by and between (i) the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"); (ii) the County of Riverside, a political subdivision of the State of California ("COUNTY"); (iii) The Woods (Riverside) Venture, L.L.P., a Delaware limited liability limited partnership ("ASSIGNOR"); and (iv), Forestar (USA) Real Estate Group Inc., a Delaware corporation ("ASSIGNEE"), (together, the "Parties"). The Parties hereto agree as follows:

RECITALS

A. On August 1, 2006 [DISTRICT's Board Agenda Item No. 11.5], DISTRICT, COUNTY and Continental Residential, Inc. entered into a Cooperative Agreement ("AGREEMENT"), which set forth the terms and conditions under which Continental Residential, Inc. will design and construct certain flood control and drainage facilities required as a condition of approval for Tract No. 30809 located in the unincorporated western area of Riverside County, State of California (hereinafter, the "PROPERTY"); and

B. On December 15, 2015, DISTRICT, COUNTY, ASSIGNOR and Continental Residential, Inc. previously entered into that certain Assignment, Assumption and Amendment Agreement [DISTRICT's Board Agenda Item No. 11.2], recorded as Document No. 2016 - 0028036 in the Official Records of the County of Riverside and hereinafter called "ASSIGNMENT", setting forth the respective rights and obligations concerning ASSIGNOR's proposed design and construction of PROPERTY; and

C. Subsequent to the execution of said ASSIGNMENT, ASSIGNEE has acquired fee title to the PROPERTY; and

D. A true copy of the AGREEMENT and ASSIGNMENT have been provided to

ASSIGNEE and said AGREEMENT and ASSIGNMENT describe the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract No. 30809 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and maintenance by DISTRICT and COUNTY; and

E. AGREEMENT and ASSIGNMENT stipulate that ASSIGNOR may assign its rights and responsibilities as set forth therein subject to the written consent of the parties thereto; and

F. The totality of ASSIGNOR's rights, title, interests, benefits and privileges pursuant to AGREEMENT and ASSIGNMENT are hereinafter collectively called "ASSIGNOR RIGHTS" and the totality of ASSIGNOR's obligations pursuant to AGREEMENT and ASSIGNMENT are hereinafter collectively called "ASSIGNOR OBLIGATIONS"; and

G. ASSIGNOR RIGHTS and ASSIGNOR OBLIGATIONS are hereinafter altogether called "RIGHTS AND OBLIGATIONS"; and

H. ASSIGNOR, ASSIGNEE, COUNTY, and DISTRICT intend that, by execution of this SECOND ASSIGNMENT, ASSIGNEE shall assume all of ASSIGNOR's RIGHTS AND OBLIGATIONS; and

I. Concurrently with the assignment and assumption of AGREEMENT and ASSIGNMENT, DISTRICT desires to make certain amendments to the AGREEMENT and ASSIGNMENT in its entirety; and

J. AGREEMENT specifies that it may be changed or modified subject to the written consent of the Parties thereto; and

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

1. The above Recitals are true and correct.
2. By execution of this SECOND ASSIGNMENT, ASSIGNOR hereby assigns all of its RIGHTS AND OBLIGATIONS to ASSIGNEE.
3. For the benefit of COUNTY and DISTRICT, ASSIGNEE hereby agrees to be bound by the assignment of RIGHTS AND OBLIGATIONS as set forth in Paragraph 2 above.

4. AGREEMENT is hereby amended as follows:

I. Section I.8 is revised to read:

"Notify DISTRICT in writing (Attention: Contract Services Section), at least twenty (20) days prior to the start of construction of DISTRICT DRAINAGE FACILITIES. Construction shall not begin on any element of DISTRICT DRAINAGE FACILITIES, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence construction of DISTRICT DRAINAGE FACILITIES."

5. ASSIGNMENT is hereby amended as follows:

I. Section I.18 is revised to read:

"DEVELOPER shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

Without limiting or diminishing DEVELOPER's obligation to indemnify or hold DISTRICT harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement:

A. Workers' Compensation:

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000

per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT and COUNTY.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name the Riverside County Flood Control and Water Conservation District and COUNTY, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If DEVELOPER's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the Riverside County Flood Control and Water Conservation District and COUNTY, its agencies, districts, special districts, and

departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds.

D. Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for DEVELOPER's performance of work included within this Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as the law allows.

E. Pollution Liability:

DEVELOPER or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. If DEVELOPER or its construction contractor(s) maintains

broader coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage and/or higher limits maintained by DEVELOPER or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to DISTRICT.

F. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County Risk Manager, DEVELOPER'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- c. DEVELOPER shall cause their insurance carrier(s) to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

- d. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.
- f. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- h. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute

authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT DRAINAGE FACILITIES due, either in whole or in part, to said breach of this Agreement."

II. Section I.20 is revised to read:

"Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Construction Management Section) and COUNTY with written notice that PROJECT construction is substantially complete and request that DISTRICT conduct a final inspection of DISTRICT DRAINAGE FACILITIES and COUNTY conduct a final inspection of PROJECT."

6. ASSIGNEE agrees to complete construction of DISTRICT DRAINAGE FACILITIES as detailed in the AGREEMENT within twelve (12) consecutive months after execution of this Agreement and within one hundred twenty (120) consecutive calendar days after commencing work on DISTRICT DRAINAGE FACILITIES.

7. In regard to the assignment of RIGHTS AND OBLIGATIONS set forth herein, COUNTY, and DISTRICT hereby consent to and hereby agree to be bound by (i) the assignment of RIGHTS AND OBLIGATIONS in favor of ASSIGNEE, and (ii) the assumption by ASSIGNEE of said RIGHTS AND OBLIGATIONS. In further clarification of the intent of the parties, ASSIGNEE and ASSIGNOR specifically agree with DISTRICT that access and/or grant of real property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by ASSIGNEE, and in regard to all financial obligations DISTRICT shall invoice ASSIGNEE for all charges incurred pursuant to this SECOND ASSIGNMENT.

8. The assignment and assumption of RIGHTS AND OBLIGATIONS pursuant to this SECOND ASSIGNMENT shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

9. SECOND ASSIGNMENT and ASSIGNMENT may be changed or modified only upon the written consent of the Parties hereto.

10. This SECOND ASSIGNMENT is to be construed in accordance with the laws of the State of California.

11. Any and all notices sent or required to be sent to ASSIGNOR or ASSIGNEE arising from either this SECOND ASSIGNMENT, ASSIGNMENT or the obligations contained in the AGREEMENT will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Administrative Services

COUNTY OF RIVERSIDE
4080 Lemon St., 8th Floor
Riverside, CA 92502-1090
Attn: Transportation Department
Plan Check Section
Alan French

THE WOODS (RIVERSIDE) VENTURE
L.L.L.P.
41391 Kalmia Street, Suite 200
Murrieta, CA 92562
Attn: Jim Lytle

FORESTAR (USA) REAL ESTATE
GROUP INC.
14755 Preston Road, Suite 130
Dallas, TX 75254
Attn: Lauren Adams

12. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by this SECOND ASSIGNMENT, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

13. The individuals executing this SECOND ASSIGNMENT on behalf of ASSIGNOR and ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this SECOND ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this SECOND ASSIGNMENT.

14. This SECOND ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.


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IN WITNESS WHEREOF, the parties hereto have executed this SECOND
ASSIGNMENT on _____
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
JASON E. UHLEY
General Manager-Chief Engineer

By _____
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By _____
LEILA MOSHREF-DANESH
Deputy County Counsel


By _____
Deputy

(SEAL)

Second Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
02/19/2019

RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
PATRICIA ROMO
Director of Transportation

By _____
KEVIN JEFFRIES, Chairman
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By 
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

By _____
Deputy

(SEAL)

Second Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
02/19/2019

ASSIGNOR

**THE WOODS (RIVERSIDE) VENTURE,
L.L.L.P.**
a Delaware limited liability limited partnership

By: The Woods (Riverside) ASLI V, L.L.L.P., a
Delaware limited liability limited
partnership, its sole general partner

By: The Woods (Riverside) GP, LLC, a
Delaware limited liability company,
its sole general partner

By: Avanti Properties Group II, L.L.L.P., a
Delaware limited liability limited partnership,
its sole member and manager

By: Avanti Management Corporation, a Florida
corporation, its sole general partner

By 

MARVIN SHAPIRO
President

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

Second Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
02/19/2019

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF FLORIDA)

COUNTY OF ORANGE)

On March 8, 2019, before me, Shannon Kaitland Staunton, Notary Public, personally appeared Marvin M. Shapiro, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

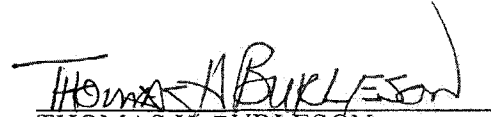
WITNESS my hand and official seal.

Signature Shannon Kaitland Staunton (Seal)



ASSIGNEE

**FORESTAR (USA) REAL ESTATE
GROUP INC.,**
a Delaware corporation



THOMAS H. BURLESON
Senior Vice President and President
West Region

(ATTACH NOTARY ACKNOWLEDGEMENT
WITH CAPACITY STATEMENT)

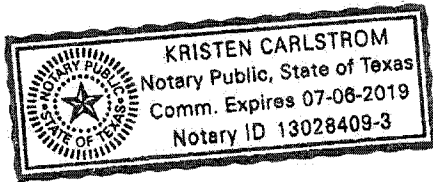
Second Assignment Assumption and Amendment Agreement: Tract No. 30809
AMR:blm
02/19/2019

STATE OF TEXAS

COUNTY OF DALLAS

The foregoing instrument was acknowledged before me this 26th day of February 2019, by

Thomas H. Burleson, as Senior Vice President of Forestar (USA) Real Estate Group Inc.



Kristen Carlstrom

Notary Public

Printed Name: Kristen Carlstrom

My Commission Expires 7/6/2019