

RESOLUTION NO. 21-R-03

A RESOLUTION OF THE CITY OF ALVIN, TEXAS, ADOPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ALVIN, TEXAS, BRAZORIA-FORT BEND COUNTIES MUNICIPAL UTILITY DISTRICT NUMBER 3, D.R. HORTON-TEXAS, LTD., AND 258 COLONY INVESTMENTS, LTD.; AND SETTING FORTH RELATED MATTERS THERETO.

WHEREAS, the City of Alvin is a home rule municipal corporation that provides a full-range of governmental services to its citizens; and

WHEREAS, Brazoria-Fort Bend Counties Municipal Utility District No. 3 (the “District”), is a conservation and reclamation district and a political subdivision of the State of Texas, created by order of the Texas Commission on Environmental Quality; and

WHEREAS, D.R. Horton-Texas, Ltd., a Texas limited partnership and 258 Colony Investments, Ltd., a Texas limited partnership (collectively referred to herein as the “Owner”), is the owner of property located within Brazoria-Fort Bend Counties Municipal Utility District No. 3, and the Property (as defined in the Development Agreement), is developable land within the District, and the Owner anticipates development activities occurring thereon; and

WHEREAS, the Property is partially located within the extraterritorial jurisdiction of Alvin, Texas, and partially in the extraterritorial jurisdiction of the City of Missouri City, Texas; and

WHEREAS, on October 1, 2020, in Ordinance 20-Z, Alvin released its ETJ as to a portion of the Property, and the District has requested Alvin forgo releasing its ETJ under Section 42.023 of the Texas Local Government Code as it pertains to the Property; and

WHEREAS, Alvin is agreeable to maintaining the ETJ status of the Property until all plats and plans sought for approval by the Owner of the Property are approved by Alvin and construction of the District facilities within such platted areas is complete, or four (4) years from the Effective Date of the Development Agreement; and

WHEREAS, the Owner is willing to pay for platting, planning, and related fees to remain in the ETJ of Alvin; and

WHEREAS, the City, District and Owner have the authority to enter into the Development Agreement pursuant to Section 212.171, *et seq.*, of the Texas Local Government Code; and

WHEREAS, the Development Agreement is found by the City Council of the City of Alvin, Texas, to be in the public interest to authorize this action;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. That the City Council of Alvin, Texas, hereby adopts the Development Agreement between the City of Alvin, Texas, Brazoria-Fort Bend Counties Municipal Utility District Number 3, D.R. Horton-Texas, Ltd., And 258 Colony Investments, Ltd., including the exhibits, attached hereto and made a part hereof for all purposes.

Section 3. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on this the 7th day of January 2021.

THE CITY OF ALVIN, TEXAS

ATTEST

Paul A. Horn, Mayor

Dixie Roberts, City Secretary

**DEVELOPMENT AGREEMENT
BY AND BETWEEN BRAZORIA-FORT BEND COUNTIES MUNICIPAL UTILITY
DISTRICT NO. 3, THE CITY OF ALVIN, TEXAS, D.R. HORTON-TEXAS, LTD, AND
258 COLONY INVESTMENTS, LTD**

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of _____, 2020 (“Effective Date”), by and between the City of Alvin, a home-rule city located in Brazoria County, Texas (the “City” or “Alvin”); Brazoria-Fort Bend Counties Municipal Utility District No. 3, a political subdivision of the State of Texas, operating under the provisions of Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended (the “District”); and D.R. HORTON-TEXAS, LTD., a Texas limited partnership and 258 COLONY INVESTMENTS, LTD., a Texas limited partnership (collectively referred to herein as the “Owner”).

RECITALS

WHEREAS, Owner is the owner of the approximately 565.339 acres of land described in Exhibit “A” attached hereto and depicted in the map attached hereto as Exhibit “B” (“Property”), which is located within the boundaries of the District; and

WHEREAS, the Property is partially located in the extraterritorial jurisdiction (“ETJ”) of Alvin and partially in the ETJ of the City of Missouri City, Texas; and

WHEREAS, pursuant to Section 54.0163 of the Texas Water Code, the board of directors of a district that is located in the ETJ of more than one municipality may, by resolution, select the municipality that may exercise authority within the district as a whole; and

WHEREAS, on December 8, 2020, the District passed a Resolution Selecting Extraterritorial Jurisdiction declaring that the Property be wholly in the ETJ of Alvin under Section 54.0163 of the Texas Water Code; and

WHEREAS, Section 42.023 of the Texas Local Government Code authorizes Alvin to release its ETJ by ordinance or resolution; and

WHEREAS, on October 1, 2020, in Ordinance 20-Z, Alvin released its ETJ as to a portion of the Property; and

WHEREAS, the District has requested Alvin forgo releasing its ETJ under Section 42.023 of the Texas Local Government Code as it pertains to the Property; and

WHEREAS, Alvin is agreeable to maintaining the ETJ status of the Property until all plats and plans sought for approval by the Owner of the Property are approved by Alvin and construction of the District facilities within such platted areas is complete; and

WHEREAS, the Owner is willing to pay for platting, planning, and related fees to remain in the ETJ of Alvin; and

WHEREAS, the City, District and Owner have the authority to enter into this Agreement pursuant to Section 212.171, *et seq.*, of the Texas Local Government Code; and

WHEREAS, the City, District and Owner intend that this Agreement be a development agreement as provided for by of Section 212.172 of the Texas Local Government Code.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, and other good and valuable consideration, the receipt of which are hereby acknowledged, the City, District and Owner agree as follows:

ARTICLE I MAINTAIN ETJ STATUS

The City agrees to maintain the ETJ status of the Property until such time as all plats and plans sought for approval by the Owner of the Property are approved by the City and construction of the District facilities within such platted areas is complete.

ARTICLE II PLATTING AND PLANNING FEES

2.1. Platting and Planning Fees. Beginning on the Effective Date of this Agreement, Owner shall pay applicable platting and planning fees as set forth in Chapter 28 of the Code of Ordinances of the City, and an additional fee of seventy-five dollars (\$75.00) per lot for each single-family home lot located within a plat, which fee shall be due at the time the plat is submitted for review by the City.

2.2. Platting and Planning Submission. Owner shall not submit more than one (1) final plat and associated construction plans per month for review by the City, not including construction plans for Utility Facilities as addressed below.

2.3. Utility Facilities. The term “Utility Facilities” shall mean utility facilities necessary to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, of the Texas Constitution and operated pursuant to Chapters 49 and 54 of the Texas Water Code, sought to be constructed within the boundaries of the Property, that are not located in a platted section of the Property.

2.4. Construction Plans For Utility Facilities. Owner shall not submit more than one (1) construction plan for any Utility Facilities per month for review by the City.

ARTICLE III TERM OF AGREEMENT

This Agreement shall remain in effect until the earlier of (i) such time as all plats and plans sought for approval by the Owner of the Property are approved by the City and

construction of the District facilities within such plats is complete; or (ii) four (4) years from the Effective Date of this Agreement.

ARTICLE IV
MISCELLANEOUS PROVISIONS

4.1. Default; Remedies. No party shall be in default under this Agreement until written notice of such party's alleged failure to perform has been given to all parties to this Agreement (including a detailed description of the alleged failure) and until such party has had a reasonable opportunity to cure the alleged failure (taking into consideration the nature and extent of the alleged failure, but in no event less than thirty (30) days after the notice is given). If a party is in default under this Agreement, the exclusive remedies of the non-defaulting party shall be injunctive relief, mandamus, or specific performance specifying the actions to be taken by or prohibited of the defaulting party and the actions, if any, permitted to be taken by the non-defaulting party to remedy the default. Such relief shall be directed solely to the failed obligation and the defaulting party and shall not address or include any activity or actions not directly related to the failed obligation.

4.2. Approvals and Consents. Approvals or consents required or permitted to be given under this Agreement by the City shall be in accordance with the City of Alvin Subdivision Ordinance Chapter 21. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

4.3. Address and Notice. Unless otherwise provided in this Agreement, any notice to be given under this Agreement shall be given in writing and may be given either by depositing the notice in the United States mail postpaid, registered or certified mail, with return receipt requested; delivering the notice to an officer of such party; or sending the notice by facsimile, when appropriate. Notice deposited by mail in the foregoing manner shall be effective the day after the day on which it is deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as follows:

If to Owner: D.R. Horton-Texas, Ltd.
 Attn: Jonathan Woodruff
 6744 Horton Vista Drive, Suite 100
 Richmond, Texas 77407

 258 Colony Investments, Ltd.
 Attn: Brad Richie
 Great America Companies, Inc.
 10003 NW Military Highway, Suite 2201
 San Antonio, Texas 78231

If to City: City of Alvin, Texas
 Attn: Suzanne L. Hanneman
 City Attorney
 216 West Sealy Street

Alvin, Texas 77511

If to District: Brazoria-Fort Bend Counties Municipal Utility District No. 3
Attn: Laken Jenkins Kilgore
Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046

The parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice of such change to the other parties.

4.4. No Additional Waiver Implied. The failure of any party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other parties.

4.5. Reservation of Rights. All rights, powers, privileges and authority of the parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the parties and, from time to time, may be exercised and enforced by the parties.

4.6. Merger. This Agreement embodies the entire understanding between the parties and there are no representations, warranties or agreements between the parties covering the subject matter of this Agreement.

4.7. Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

4.8. Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

4.9. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

4.10. Amendments. This Agreement may only be amended by the mutual consent of the parties, including a resolution or ordinance of the City, and no City officer or official is authorized or empowered to vary or waive the terms of this Agreement absent such consent and resolution or ordinance.

4.11. Covenant Running with the Land. Subject to the limitations and release provisions contained in this section, this Agreement binds and constitutes a covenant running with the Property. This Agreement shall be recorded in the Official Public Records of Brazoria and Fort Bend Counties, Texas after its execution. As required by Section 212.172(f) of the Texas Local Government Code, subject to the provisions of Article III herein: (1) this Agreement is binding on the City and Owner and on their respective successors and assigns for the term of this Agreement; however (2) this Agreement is not binding on, and does not create any encumbrance

to title as to, any end-buyer of a fully developed and improved lot within the Property. For purposes of this Agreement, the City and Owner agree that the term “end-buyer” means any owner, lessee, or occupant; and that the term “fully developed and improved lot” means any lot, regardless of proposed use, for which the City has approved a final plat. The City and Owner further agree that this Agreement shall not be binding upon any property (whether or not platted) used or intended to be used for a church, school, police/fire/EMS facility, library, public park, public community center, or any other public use.

4.12. Authority. By executing below, City and Owner agree that they have all necessary authority to enter into this Agreement, including any necessary approval by partners, directors or council members. In particular, the parties intend that this Agreement shall constitute an agreement entered into pursuant to the authority of Subchapter G, Chapter 212 of the Texas Local Government Code.

4.13. Required Verifications. As required by Chapter 2270 of the Texas Government Code, Owner hereby verifies that neither it, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, boycotts Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Pursuant to Chapter 2252 of the Texas Government Code, Owner represents and certifies that, at the time of the execution of this Agreement neither Owner, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 2270 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0102, 2270.0052, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date and year set forth in the first page hereof.

CITY:

CITY OF ALVIN, TEXAS

Paul A. Horn, Mayor

ATTEST:

Dixie Roberts, City Secretary

APPROVED AS TO FORM
AND LEGALITY

Suzanne L. Hanneman, City Attorney

STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

This instrument was acknowledged before me on this ___ day of _____, 20___, by _____, Mayor of Alvin, Texas.

Notary Public, State of Texas

(SEAL)

DISTRICT:

BRAZORIA-FORT BEND COUNTIES
MUNICIPAL UTILITY DISTRICT NO. 3

ATTEST:

Secretary, Board of Directors

By: _____
President, Board of Directors

(DISTRICT SEAL)

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 20__,
by _____, as _____, and _____, as
_____, respectively, of the Board of Directors of Brazoria-Fort Bend Counties
Municipal Utility District No. 3, on behalf of said Municipal Utility District.

Notary Public, State of Texas

(SEAL)

“OWNER”

D.R. Horton-Texas, Ltd.,
a Texas limited partnership

By: D.R. Horton, Inc.,
a Delaware corporation
Authorized Agent

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2020, by _____, _____ of D.R. Horton, Inc., a Delaware corporation, the authorized agent of D.R. Horton-Texas, Ltd, a Texas limited partnership, on behalf of said entity.

Notary Public, State of _____

(SEAL)

258 COLONY INVESTMENTS, LTD.
A Texas limited partnership

By: FW Companies, LLC
a Texas limited liability company
its General Partner

By: _____
Name: Brad Richie
Title: Secretary

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2020, by Brad Richie, Secretary of FW Companies, LLC, a Texas limited liability company, the General Partner of 258 Colony Investments, Ltd., a Texas limited partnership, on behalf of said entity.

Notary Public, State of _____

(SEAL)

EXHIBIT "A"
Property Description

EXHIBIT "B"
Property Depiction