

Recorded at the Request of
and after recording return to:
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Document Title:
Amendment to Agreement

Reference Document:
Agreement, Whatcom County Auditor File No. 2070202655

Grantor:
Four 'S' Investments U.S., Inc.

Grantee:
City of Lynden

Abbreviated Legal Description:
Ptn NE ¼ SE ¼ Sec 24 Twp 40 N Rge 2 E
Additional Legal Descriptions attached on page _____

Assessor Tax Parcel Nos:
1. **400224 462156 0000**
2. **400224 502162 0000**

AMENDMENT to AGREEMENT

This amendment to Agreement ("**Amendment**") is effective _____, 2023, by and between Four 'S' Investments U.S., Inc., a Washington corporation ("**Four 'S'**") and the City of Lynden ("**City**"). This Amendment modifies the existing Agreement described below.

Recitals

Whereas, City and the prior owner of the Property entered into an agreement titled "Agreement" on February 7, 2007, recorded under Whatcom County Auditor File No. 2070202655 ("**Agreement**"), which settled a dispute between them; and

Whereas, the Agreement compels the Future Owner of the Property to pay for future improvements to the road fronting that portion of the Property lying westerly of Station No. 22 + 70, and as shown on Exhibit A thereof; and

Whereas, the Agreement provided that whenever the Property developed more than thirty-two (32) mobile homes, a Future Owner's obligation to pay for "road improvements" would be triggered; and

Whereas, the term "road improvements" was not defined in the Agreement; and

Whereas, Four 'S' became the successor in interest to the prior owner and a Future Owner by purchasing the Property subject to the Agreement; and

Whereas, the City approved a certain conditional use permit for Four 'S' Investments, dated November 23, 2021 ("Conditional Use Permit"), subject to nineteen (19) enumerated conditions set forth on pp. 7-8 of the Conditional Use Permit, to authorize that additional mobile homes be allowed on Property, so that the total number of mobile homes could be forty-six (46); and

Whereas, Condition No. 18 of the Conditional Use Permit requires compliance with the requirements and conditions listed in Section VI of the Technical Review Committee Staff Report dated October 15, 2021 ("TRC Report"); and

Whereas, Four 'S' Investments activities related to the Conditional Use Permit must also be conducted in compliance with the requirements, conditions, and mitigating measures set forth in the City of Lynden Mitigated Determination of Non-Significance for the "Duffner Mobile Home Park Expansion" dated July 20, 2021 ("Project MDNS"); and

Whereas, the Conditional Use Permit, TRC Report, and Project MDNS are and will remain documents on file with the City and are hereby fully incorporated into this Amendment by reference; and

Whereas, the City is amenable to delaying any improvements to the road fronting the Property so that such improvements align with other City plans for the area, and to keep the infrastructure costs affordable for the addition of the mobile home units; and

Whereas, the foregoing recitals form a material part of this Amendment;

Now therefore know all persons by these presents, in consideration of the covenants and agreements of the parties hereto, Four 'S' and City hereby agree as follows:

1. **Replacing the Number 32**

In the Agreement's Section 2(a), the text at the end of the paragraph reading "thirty-two (32)" is struck and replaced with the text "forty-six (46)". This is the sole change to Section 2(a).

2. **Amending the Corresponding Footnote**

In the only footnote to the Agreement's Section 2(a), which is marked "1," any text reading "thirty-two (32)" is struck and replaced with the text "forty-six (46)".

3. **Defining "Road Improvements"**

The following text is added after the last sentence of the Agreement's Section 2:

When used throughout this Agreement, “road improvements” means a project to construct standard three-quarters (¾) improvements that would bring the existing road section described herein up to the City’s legislated street design standards.

4. Incorporating All Requirements and Conditions of Conditional Use Permit, TRC Report, and MDNS as Requirements of this Amendment

The following text shall be added as a new last paragraph to the Agreement’s Section 2: The right to have more than thirty-two (32) and up to a maximum of forty-six (46) mobile homes on the Property shall be subject to and dependent upon full and ongoing perpetual compliance with all conditions and requirements set forth in the Conditional Use Permit, TRC Report, and Project MDNS, as described in the Amendment. Failure to timely satisfy and maintain ongoing compliance with all such conditions and requirements shall result in automatic rescission of any right to have more than thirty-two (32) mobile homes on the Property.

5. Survival

Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect. All capitalized terms not defined herein shall have the meaning given to them in the Agreement.

6. Non-Waiver of Enforcement

For so long as this Amendment remains in place, failure by the City to enforce any provision herein, regardless of the passage of time, shall not be a waiver of the right to enforce or a defense for noncompliance, nor shall any provision herein be a defense to revocation of the Conditional Use Permit.

7. Entire Agreement

The Agreement, as modified by this Amendment, shall be read as one instrument. This Amendment shall bind and apply to the parties hereto, along with their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to be executed as of the date first written above.

Four "S" Investments U.S., Inc.:

The City of Lynden:

By: _____

By: _____

Its: _____

Its: _____

STATE OF WASHINGTON }
 }
 } ss.
COUNTY OF WHATCOM }

On this ___ day of _____, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ as _____ of **FOUR “S” INVESTMENTS U.S., INC.**, who acknowledged said instrument to be his free and voluntary act and deed for Four “S” Investments U.S., Inc. for the uses and purposes herein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Print Name: _____
Notary Public in and for the State of Washington.
My commission expires: _____

STATE OF WASHINGTON }
 }
 } ss.
COUNTY OF WHATCOM }

On this ___ day of _____, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ as _____ of **THE CITY OF LYNDEN**, who acknowledged said instrument to be his free and voluntary act and deed for the City for the uses and purposes herein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Print Name: _____
Notary Public in and for the State of Washington.
My commission expires: _____