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June 10, 2016

Mr. David Lein  
Graves, Dougherty, Hearon & Moody  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701

*via Hand Delivery*

Re: Settlement Update - Cause No. 15369; *Forestar (USA) Real Estate Group, Inc. v. Lost Pines Groundwater Conservation District, et al*; in the 335<sup>th</sup> Judicial District Court of Lee County, Texas

Dear David:

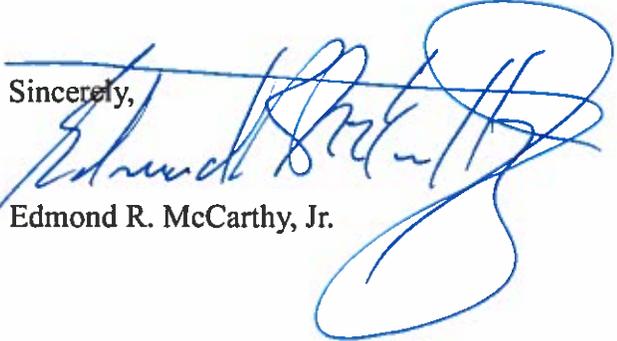
Enclosed please LPGCD's original of the Monitoring Well System Construction and Maintenance Agreement, executed by David Grimm on behalf of Forestar (USA) Real Estate Group, Inc., in furtherance of the Parties' 2015 settlement.

With the delivery of this document for the District's files, I believe that we have concluded all of the procedural/paperwork steps associated with the settlement. Going forward, I believe that our respective clients, in coordination with their respective expert hydrogeologic consultants are in charge of implementing the settlement.

Please advise me immediately if you believe there are additional actions we as lawyers need to pursue related to completion of the settlement. Otherwise, I thank you for your efforts along with Robin's and Greg's to bring the settlement to fruition.

Best wishes.

Sincerely,

  
Edmond R. McCarthy, Jr.

ERM/tn  
Encl.

cc: Forestar (USA) Real Estate Group, Inc.  
Attn: David Grimm & Brent Covert

## **MONITORING WELL SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT**

THIS MONITORING WELL SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT (the "Agreement") is entered into as of the 16th day of March, 2016 (the "Effective Date"), by and between the LOST PINES GROUNDWATER CONSERVATION DISTRICT, a groundwater conservation district organized pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution (the "District"), and FORESTAR (USA) REAL ESTATE GROUP, INC., a Delaware corporation ("Forestar"). The District and Forestar are sometimes collectively referred to as the "Parties."

### **RECITALS**

A. The District has issued Operating Permits to Forestar for the following ten groundwater wells located in Lee County, Texas: Well No. 5933122, Well No. 5933409, Well No. 5933410, Well No. 5933411, Well No. 5933412, Well No. 5933217, Well No. 5933123, Well No. 5933413, Well No. 5933504, and Well No. 5933505 (the "Aggregated Wells").

B. The Operating Permits require the construction, operation and maintenance of new monitoring wells designed to measure drawdown in the Simsboro aquifer.

C. Forestar has previously constructed, and the District has previously equipped, a monitoring well located in Lee County, and Forestar has provided the District with access to that well and the water level data from that well.

D. The District and Forestar desire to enter into this Agreement regarding the construction of new monitoring wells and the operation and maintenance of the new monitoring wells and the existing monitoring well.

### **AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement and the District's issuance of the Operating Permits for the Aggregated Wells, the District and Forestar agree as follows:

### **ARTICLE I CONSTRUCTION OF NEW MONITORING WELLS**

**Section 1. The Project.** The "**Project**" shall consist of six (6) new groundwater wells drilled at locations that are available and approved by the District General Manager (the "New Monitoring Wells"), together with equipment for monitoring the groundwater levels in those wells that is compatible with the District's existing monitoring well system equipment (the "Monitoring Equipment"), and all easements as are necessary for the operation and maintenance of and access to the New Monitoring Wells and Monitoring Equipment (the "Monitoring Well Authorizations").

Section 2. Monitoring Well System. Monitoring Well System has the meaning set out in the Operating Permits.

Section 3. Design of the Project. The plans and specifications for the Project shall be prepared by consultants selected by Forestar and approved by the District. Forestar shall pay all costs and expenses associated with the design of the Project. The design shall comply with all applicable state and federal requirements. Forestar will submit the plans and specifications to the District General Manager for approval before it begins construction of the Project. The District General Manager agrees to review the plans and specifications and either approve them or provide written comments specifically identifying required changes within thirty (30) days of submittal. If the District General Manager fails to either approve the plans and specifications or provide written comments specifically identifying required changes within thirty (30) days of submittal, the plans and specifications will be deemed approved. If the District General Manager provides written comments to Forestar, Forestar will amend the plans and specifications to address the written comments and resubmit the plans and specifications to the District for approval. Forestar shall obtain approval of the plans and specifications by all other governmental agencies with jurisdiction. Forestar shall not begin construction of the Project until the District and all other agencies with jurisdiction have approved the plans and specifications.

Section 4. Completion of Project.

(a) The Project shall be completed by a contractor or contractors selected by Forestar and approved by the District.

(b) No changes to the approved plans and specifications for the Project may be made without the approval of the District General Manager.

(c) The Project shall be constructed in a good and workmanlike manner and all material used in such construction shall be new, free from defects and fit for their intended purpose.

(d) Forestar shall provide notice to the District General Manager at least five (5) days in advance of the drilling of any New Monitoring Well or the installation of the Monitoring Equipment at a New Monitoring Well. The notice shall include the location of the New Monitoring Well to be drilled or equipped.

(d) The District may inspect the construction or installation at any reasonable time.

(e) Upon completion of construction of a New Monitoring Wells and installation of the Monitoring Equipment, Forestar shall provide the District General Manager with applicable acceptance letters and a certificate of completion from Forestar's consultants and contractors certifying that the New Monitoring Well and the Monitoring Equipment have been completed in accordance with the plans and specifications approved by the District.

Section 5. Cost of Project to be Funded by Forestar. Forestar will pay all costs of the Project, including without limitation: all reasonable costs of design, engineering, materials, labor,

construction, and inspection arising in connection with the Project; all payments arising under any contracts entered into for the construction of the Project; and all reasonable costs incurred in connection with obtaining governmental approvals, certificates, or permits required for the Project (collectively, the "Project Costs"). The District shall have no responsibility for Project Costs.

Section 6. Acceptance and Conveyance. Within sixty (60) days of the District's receipt of the applicable acceptance letters and a certificate of completion, and provided that Forestar has fully complied with all requirements and obligations set forth in this Agreement and the Operating Permits, (i) the District General Manager shall accept the Project and (ii) Forestar shall convey all New Monitoring Wells, Monitoring Equipment, and Monitoring Well Authorizations to the District free and clear of any liens or encumbrances except such that may be agreed to by the District, by such instruments and documents required by the District. At any time during term of this Agreement, upon the request of the District, Forestar will take reasonable steps to assist the District in maintaining access to the New Monitoring Wells and Monitoring Equipment.

## **ARTICLE II** **EXISTING MONITORING WELL**

Section 1. Conveyance. Forestar has previously constructed Well No. 5933408 located in the Whitesides E. Survey in Lee County (96°58'13.4" W 30°27'22.3" N), and the District has previously equipped this well as a monitoring well (the "Existing Monitoring Well"). On the same date that Forestar conveys the Project to the District, Forestar shall convey the Existing Monitoring Well and all easements necessary to operate, maintain and access the Existing Monitoring Well to the District free and clear of any liens or encumbrances except such that may be agreed to by the District, by such instruments and documents required by the District. At any time during the term of this Agreement, upon the request of the District, Forestar will take reasonable steps to assist the District in maintaining access to the Existing Monitoring Well.

## **ARTICLE III** **OPERATION AND MAINTENANCE OF** **NEW MONITORING WELLS AND EXISTING MONITORING WELL**

Section 1. Monitoring Equipment. The District shall be responsible for operating, maintaining, repairing and replacing the Monitoring Equipment, at the District's sole cost. The District shall maintain the Monitoring Equipment in good condition and working order and in accordance with all applicable regulatory requirements and accepted operating practices. The groundwater level monitoring equipment at the Existing Monitoring Well shall be included in the definition of Monitoring Equipment for purposes of this Article IV. All data obtained shall be available to the District and Forestar, and Forestar shall have access to all Monitoring Wells and Monitoring Equipment upon reasonable notice to the District.

Section 2. Wells. Forestar shall be responsible for repairing and replacing any part of the New Monitoring Wells and Existing Monitoring Well except the Monitoring Equipment, at Forestar's sole cost. If repairs or replacement of any part of the New Monitoring Wells or

Existing Monitoring Well except the Monitoring Equipment are reasonably necessary or convenient for the continuous and adequate performance of the wells, the District shall provide notice to Forestar and Forestar shall make such repairs or replacement as soon as reasonably practical. In the event that Forestar fails to adequately make such repairs or replacements, the District shall have the right, but not the obligation, to perform such repairs and replacements as are reasonably required to effect the continuous and adequate performance of the wells.

Section 3. Inaccurate Data. Data collected from a New Monitoring Well or the Existing Monitoring Well during a period in which the New Monitoring Well or Existing Monitoring Well is not providing accurate water level data for that well shall not be used for any purpose under this Agreement or the Operating Permits.

#### **ARTICLE IV INDEMNITY**

Section 1. FORESTAR AGREES TO INDEMNIFY THE DISTRICT, ITS SUCCESSORS AND ASSIGNS, AND HOLD IT FREE AND HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, DEBTS, CHARGES, DAMAGES, LOSS, PENALTIES, AND EXPENSES, LIQUIDATED OR UNLIQUIDATED, EXECUTED OR EXECUTORY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ACTUAL OR CONTINGENT, WHETHER OR NOT HEREBY EXPRESSLY LISTED OR DESCRIBED, BUT WHICH MAY BE ASSERTED NEVERTHELESS AGAINST THE DISTRICT, ITS SUCCESSORS OR ASSIGNS ARISING OUT OF OR RELATED TO THE DESIGN, CONSTRUCTION AND INSTALLATION OF THE EXISTING MONITORING WELL, AND/OR ANY NEW MONITORING WELL, AND/OR ARISING OUT OF OR RELATED TO ANY REPAIR OR REPLACEMENT OF THE EXISTING MONITORING WELL OR ANY NEW MONITORING WELLS PERFORMED BY FORESTAR, BUT EXCLUDING (i) THE MONITORING EQUIPMENT AND/OR (ii) CLAIMS ARISING OUT OF THE NEGLIGENT AND/OR INTENTIONAL ACTS OF THE DISTRICT, ITS SUCCESSORS, OR ASSIGNS OUTSIDE OF THE DIRECT CONTROL OF FORESTAR.

#### **ARTICLE V REMEDIES**

Section 1. Default by Either Party. In the event of default by either Party, the other Party must give to the defaulting Party written notice of such default specifying the failure or default relied upon. If the defaulting Party fails to fully cure the default specified in such notice within thirty (30) days after receipt of such notice, the nondefaulting Party shall be entitled: (a) to a proper writ issued by a court of competent jurisdiction compelling and requiring the defaulting party to observe and perform the covenants, obligations and conditions described in this Agreement; or (b) to pursue all other legal or equitable remedies. The nondefaulting Party may employ attorneys to pursue its legal rights and if it prevails before any court or agency of competent jurisdiction, the defaulting party shall be obligated to pay all expenses incurred by the nondefaulting Party, including reasonable attorneys' fees.

Section 2. Default by Forestar. A default by Forestar that is not cured within thirty (30) days after Forestar receives written notice of the default is a violation of the Operating Permits.

**ARTICLE VI**  
**MISCELLANEOUS**

Section 1. Modification. This Agreement represents the entire Agreement between the Parties relating to construction and conveyance of the Project and the Existing Monitoring Well and supersedes all prior oral and written agreements. This Agreement shall be subject to change or modification only with the mutual written consent of Developer and the District.

Section 2. Assignability. Forestar may not assign this Agreement except in conjunction with the transfer of ownership of the Operating Permits.

Section 3. Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement shall never be considered or given any effect in construing this Agreement.

Section 4. Applicable Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Texas.

Section 5. Parties at Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall never be construed to confer any benefit to any third party.

Section 6. Waiver. Each Party may specifically, but only in writing, waive any breach of this Agreement by the other party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

Section 7. Notices. All notices from Forestar to the District shall be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

Lost Pines Groundwater Conservation District  
Attn: General Manager  
P.O. Box 1027  
Smithville, Texas 78957

All notices from the District to Forestar shall be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

Forestar (USA) Real Estate Group, Inc.  
6300 Bee Cave Rd  
Building 2, Suite 500  
Austin, Texas 78746

Either Party may change its address by giving written notice of such change to the other Party.

Section 8. Term. Except as otherwise provided herein, this Agreement shall be in force and effect from the Effective Date until the earlier of the expiration or revocation of all of the Operating Permits.

Section 9. Authority for Execution. The District certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its statutory authority and bylaws. Forestar hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its articles of incorporation and bylaws.

Section 10. Multiple Originals. This Agreement shall be executed in a number of counterparts, each of which shall for all purposes, be deemed to be an original, and all such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, Forestar has caused its corporate names to be hereunto subscribed by its officers, thereunto duly authorized; and the President of the District has executed, and the Secretary of the District has attested this instrument on behalf of said District pursuant to an Order passed and approved by the Board of Directors of said District.

EXECUTED this 6<sup>th</sup> day of June, 2016.

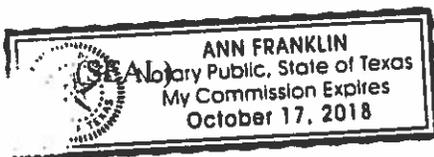
**LOST PINES GROUNDWATER  
CONSERVATION DISTRICT**

By: Michael H. Talbot  
Michael H. Talbot, President

STATE OF TEXAS       §  
                                  §  
COUNTY OF BASTROP   §

This instrument was acknowledged before me on the 4<sup>th</sup> day of May, 2016, by MICHAEL H. TALBOT, as President of the LOST PINES GROUNDWATER CONSERVATION DISTRICT, on behalf of said District.

Ann Franklin  
NOTARY PUBLIC, State of Texas



FORESTAR (USA) REAL ESTATE  
GROUP, INC.

By: DMG  
David M. Grimm, Executive Vice President

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 6<sup>th</sup> day of June, 2016,  
by David M. Grimm, as Executive Vice President of FORESTAR (USA) REAL ESTATE  
GROUP, INC., on behalf of said corporation.



Theresa Risenhoover  
NOTARY PUBLIC, State of Texas

(SEAL)