

**WATER RESERVATION AND SUPPLY AGREEMENT**

**BETWEEN**

**HAYS COUNTY**

**AND**

**FORESTAR REAL ESTATE (USA) GROUP INC.**

**OCTOBER 1, 2013**

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**WATER RESERVATION AND SUPPLY AGREEMENT  
BETWEEN  
HAYS COUNTY  
AND  
FORESTAR REAL ESTATE (USA) GROUP INC.**

This "Water Reservation and Supply Agreement" (the "Agreement") is made and entered into as of the    day of October, 2013 (the "Effective Date"), by and between **HAYS COUNTY, TEXAS** ("Hays County"), and **FORESTAR REAL ESTATE (USA) GROUP INC.**, a Delaware corporation ("Forestar") for the purposes, *inter alia*, of addressing water supply and water quality issues in Hays County, Texas. Hays County and Forestar, together with their respective successors and/or assigns, may be referred to herein collectively as the "Parties" or individually as "Party."

**RECITALS**

WHEREAS, the development of a sustainable regional groundwater supply project to be used conjunctively with other existing and future water supplies is critical to meet the current and future water supply needs, provide much needed drought protection, and sustain long term economic development in Central Texas, including Hays County; and

WHEREAS, Forestar is developing such a regional groundwater supply project in Lee County for conveyance and delivery to wholesale customers along the Interstate Highway 35 and State Highway 130 corridors in Central Texas, including areas served by Hays County (the "Water Project" as more particularly defined in Section 2.1); and

WHEREAS, Forestar's Water Project currently consists of (i) leases of groundwater rights, including the requisite rights of access to drill for and develop those groundwater rights, underlying approximately 20,000 acres of land, more or less, in Lee County, Texas (the "Forestar Leases"), and (ii) Forestar's applications to the Lost Pines Groundwater Conservation District seeking authorization to drill ten (10) wells and produce and transport (as needed) up to 45,000 acre-feet of groundwater from the Simsboro Aquifer and, thereafter, beneficially use the same for municipal water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties ("Forestar's Applications"), and (iii) permits from the Lost Pines Groundwater Conservation District authorizing the production and transport of 12,000 acre-feet of groundwater per annum from the Forestar Leases for beneficial use, including in Hays County, for municipal purposes during the term of this Agreement as defined herein ("Forestar's Permits"); and

WHEREAS, Forestar has filed a motion for rehearing to secure permits for the 33,000 acre-feet of water per annum described in Forestar's Applications which were not granted, and intends to pursue appeals as needed; and

WHEREAS, Hays County desires to assess the feasibility of obtaining groundwater from and through the Water Project to supplement the existing water resources available in Hays County pursuant to a long term contract; and

WHEREAS, Hays County therefore desires to reserve a groundwater supply of 45,000 acre-feet per annum available under the Forestar Leases, including the 12,000 acre-feet per

annum permitted by the Lost Pines GCD, and further desires to secure the right to acquire the same groundwater for a period of at least fifty (50) years; and

WHEREAS, Hays County is authorized to acquire, own, finance, operate, or contract for the operation of, a water or sewer utility system to serve unincorporated areas of the county in the same manner and under the same regulations as a municipality; and

WHEREAS, Hays County is authorized to cooperate with other political subdivisions of the state, including municipalities, to deliver water that a county has acquired from an underground source for Hays County's water supply and that is not needed in the unincorporated areas; and

WHEREAS, Forestar desires to provide, and Hays County desires to enter into a contract to purchase, a groundwater supply of 45,000 acre-feet per annum in order to be able to reserve, take and/or assign all or a portion of the same in accordance with the terms and conditions of this Agreement; and

WHEREAS, Forestar has provided Hays County with copies of the Forestar Leases and Forestar Permits; and

WHEREAS, this Agreement includes terms and provisions that intended to provide for a water supply available for use throughout Hays County, Texas and the region, based upon a sixty (60) year minimum planning period; and

WHEREAS, the long-term vision incorporated herein necessarily requires the Parties to anticipate and consider both the needs and capabilities of third-parties who will be eligible to participate in the benefits the Parties create pursuant to the implementation of this Agreement, including the individual third-parties respective water supply needs, water treatment and storage capabilities and related needs and opportunities;

## **AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Forestar and Hays County agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

**Section 1.1 Defined Terms.** As used in this Agreement, in addition to the defined terms in this Agreement, the following terms shall have the meanings set forth in this Article:

"**Acre-foot**" means that volume defined by an area of one acre, one foot deep. One acre-foot of water equals 325,851 gallons.

"**Agreement**" means this Water Reservation and Supply Agreement by and between Forestar and Hays County dated as of the Effective Date, as the same may be amended in writing by the Parties from time-to-time.

"**Base Rate**" means the dollar amount on a per acre-foot basis the Parties agree to pay and receive as a fair value for the groundwater purchased during the Initial Term but not delivered pursuant to this Agreement. The Base Rate (i) is subject to adjustment after the Initial Term from time to time as contemplated herein, and (ii) unless otherwise agreed to by the Parties in a written amendment or separate long term water supply contract, is exclusive of the cost for the treatment, storage and/or delivery of the Groundwater once it is pumped beyond the wellhead, *e.g.*, pipeline financing, construction and operation costs as well as treatment costs, which costs may be separately negotiated and agreed upon by the Parties as part of the long term water supply contract authorized by this Agreement.

"**Contract Year**" means the twelve calendar month period that commences at 12:01 a.m., Central Daylight Savings Time, of October 1<sup>st</sup> of each calendar year during the term of this Agreement as the same may be extended, and ending at 12:00 a.m. Central Daylight Savings Time on the immediately succeeding October 1<sup>st</sup>.

"**Delivered Groundwater**" means Groundwater produced from the Forestar Leases in the Forestar Well Field pursuant to the Forestar Permits available for beneficial use by Hays County at the meter(s) installed by Forestar to measure the Groundwater at the Delivery Point.

"**Delivery Point**" means at the wellhead in the Forestar Well Field to be developed by Forestar on the Forestar Leases, or such other location(s) as may be agreed to by the Parties in writing for the delivery by Forestar of the Groundwater purchased by Hays County pursuant to this Agreement.

"**Delivered Rate**" means the dollar amount on a per acre-foot basis the Parties agree to pay and receive as a fair value for the groundwater metered and delivered to Hays County at the Delivery Point during the term of this Agreement. The Delivered Rate (i) is subject to adjustment after the Initial Term from time to time as contemplated herein, and (ii) unless otherwise agreed to by the Parties in a written amendment or separate long term water supply contract, is exclusive of the cost for the treatment, storage and/or delivery of the Groundwater once it is pumped beyond the wellhead, *e.g.*, pipeline financing, construction and operation costs as well as treatment costs, which costs may be separately negotiated and agreed upon by the Parties as part of the Long Term Water Supply Contract authorized by this Agreement.

"**Escrow Agreement**" means the agreement by and between Forestar and Hays County which prescribes the method and terms of holding the Base Rate payment for the first Contract Year in escrow until an opinion has been issued by the Attorney General of the State of Texas regarding Hays County's authority to enter into and carry out the transactions contemplated by this Agreement including the use of *ad valorem* tax revenues for payment of all costs arising hereunder.

"**Extended Term**" means the five (5) year extended term of this Agreement beyond the Initial Term that, if invoked by Hays County pursuant to this Agreement, commences at 12:01

a.m. Central Daylight Savings Time on the fifth anniversary of the Effective Date and ends at 12:00 a.m. Central Daylight Savings Time, on the tenth anniversary of the Effective Date.

**"Force Majeure"** means any inability on the part of either (i) Forestar for whatever reason to provide a reservation for Groundwater or to deliver Groundwater (whether quantity or quality), or otherwise perform its obligations in accordance with the terms, conditions, standards and requirements of this Agreement on account of any cause not reasonably within the control of Forestar, or (ii) Hays County for whatever reason to perform its obligations in accordance with the terms, conditions, standards and requirements of this Agreement on account of any cause not reasonably within the control of Hays County, including without limitation, and by way of example only, the following: acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy or terrorist, orders or actions of any kind of the government of the United States, the State of Texas or any local government or political subdivision, or any civil or military authority, insurrections, riots, terrorist act or incident, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to wells, pumps, booster stations, storage facilities, dams, machinery, pipelines, canals, or other structures, partial or entire failure of the groundwater supply including pollution (accidental or intentional); provided, however, that the inability to make payments contemplated by this Agreement shall never constitute an event of Force Majeure.

**"Forestar"** means Forestar Real Estate (USA) Group Inc., a Delaware corporation, and any of its affiliates and/or subsidiaries, or any partnership, joint venture, or other entity or alliance in which Forestar has or acquires an equity or other interest, that is owned or operated for purposes of fulfilling Forestar's obligations under this Agreement, together with all or any of Forestar's authorized successors in interest and/or permitted assigns, in whole or in part.

**"Forestar Permits"** means all permits issued to Forestar by the Lost Pines Groundwater Conservation District authorizing the production and beneficial use of groundwater from the Forestar Leases for municipal purposes in Hays County up to 45,000 acre-feet per annum, including any amendments and renewals of such permit. As of the Effective Date, the Forestar Permits are limited to, but include, the 12,000 acre-feet per annum authorized by the Permits attached hereto as Appendix "A."

**"Groundwater"** means native groundwater produced by the Water Project from the Simsboro Aquifer beneath the property identified in the Forestar Leases that meets the requirements of this Agreement.

**"Hays County"** means Hays County, Texas, acting by and through its Commissioners Court, together with all or any of Hays County's successors in interest and/or assigns, in whole or in part.

**"Initial Term"** means the five (5) year term of this Agreement commencing at 12:01 a.m. Central Daylight Savings Time on October 1, 2013, and ending at 12:00 a.m. Central Daylight Savings Time, on the fifth anniversary of said October 1<sup>st</sup>.



**Laws**" or "**Laws and Regulations**" means all applicable federal, state and local laws, rules, regulations, ordinances, codes, orders, decrees or requirements, as the same may be amended and/or enacted from time-to-time.

**"Long Term Purchase Option"** means the option granted by Forestar to Hays County to secure the right to purchase up to 45,000 acre-feet of Groundwater for an additional term of 50 years, as more particularly described in Section 10.1.

**"Long Term Water Supply Contract"** means the optional long term water supply contract that may be negotiated by the Parties for construction of the Treatment Facilities and Transportation Facilities following Hays County's exercise of the Long Term Purchase Option granted herein.

**"Lost Pines Groundwater Conservation District," "Lost Pines GCD," or "LPGCD"** shall mean the Lost Pines Groundwater Conservation District with regulatory authority over groundwater production in Lee and Bastrop Counties, Texas, created pursuant to Article XVI, § 59 and operating in accord with Chapter 36, Texas Water Code, and Texas Special District Local Laws Code Chapter 8849, or any successor entity with jurisdiction over the Water Project.

**"Notice and Cure"** means the opportunity to cure upon receipt of notice of any Party's failure under this Agreement as described in Section 8.1.

**"Parties"** means Hays County and Forestar, including their respective successors and/or assigns, or individually as "Party."

**"Permitted Water"** means Groundwater permitted to Forestar as part of the Forestar Permits by the Lost Pines Groundwater Conservation District for beneficial use for municipal water supply purposes in Hays County, Texas, during the term of this Agreement. As of the Effective Date, the volume of permitted water authorized by the Forestar Permits is 12,000 acre-feet of water for municipal purposes in Hays County.

**"TCEQ"** means the Texas Commission on Environmental Quality, and any of its successor agencies.

**"Transportation Facilities"** means all storage, treatment, pumping and transmission facilities located beyond the Delivery Point used, necessary or required by Hays County to move the Delivered Groundwater to its designated place of use.

**"Termination Date"** means the date on which this Agreement terminates according to its terms, including the expiration date of the Initial Term, as defined in this Agreement or the expiration of the Extended Term, if any, as defined in Section 7.2, or the date of any early termination as prescribed herein.

**"Treatment Facilities"** means all Facilities used, necessary or required by Hays County beyond the Delivery Point to deliver groundwater meeting all required drinking water standards to its designated place of use.

“**Well Facilities**” means all well, storage, pumping, transmission and metering facilities to be constructed by Forestar to deliver the Permitted Water to the Delivery Point in accordance with its delivery obligations under this Agreement, and to measure the quantity of Groundwater delivered to Hays County at the Delivery Point.

“**Well Field**” means the Well Facilities constructed by Forestar on the Forestar Leases necessary for Forestar to meet its delivery and water supply obligations under this Agreement and to maintain the Forestar Permits in effect, which Facilities may be built in phases or stages.

## **ARTICLE 2**

### **WATER PROJECT**

**Section 2.1 Description of the Water Project.** The Water Project consists of the Forestar Leases, Forestar Applications, Forestar Permits and the Well Field, and Forestar’s related rights in Groundwater in Lee County, and all facilities, lands, and interests in lands comprising all, or any portion thereof, existing or that may be built or acquired by Forestar, necessary or desirable in Forestar’s sole and absolute discretion to produce and supply water to Hays County pursuant to, and as may be necessary for Forestar to meet its obligations under, this Agreement to provide Groundwater to Hays County at the Delivery Point (the “Water Project”).

**Section 2.2 Ownership of the Water Project.** Hays County acknowledges and agrees that, unless the Parties otherwise agree in writing: (i) nothing in this Agreement conveys, or is intended to convey, any ownership interest in, right or title to any portion or interest in the Water Project to Hays County; and (ii) Hays County’s rights in the Water Project pursuant to this Agreement are limited solely and exclusively to the right to purchase and/or reserve the 45,000 acre-feet of water per annum of Groundwater to be produced from the Forestar Leases pursuant to the Forestar Permits and the terms and conditions of this Agreement.

## **ARTICLE 3**

### **PARTIES’ RESPONSIBILITIES REGARDING THE WATER PROJECT**

**Section 3.1 Forestar’s Responsibilities.** In addition to the other obligations prescribed herein, Forestar shall:

(a) Maintain the Forestar Leases in effect and in good standing during the term of this Agreement as necessary to meet its obligations under this Agreement;

(b) Use its best efforts to increase the quantity of Permitted Water to 45,000 acre-feet per annum including the ongoing prosecution of its appeal (both administrative and judicial) of the Lost Pines GCD’s denial of the balance of 33,000 acre-feet of groundwater described in the Forestar Applications in an effort to secure permits for a total authorization to produce and transport up to 45,000 acre-feet of groundwater to Hays County for beneficial use in Hays County;

(c) Provide Hays County with quarterly written reports on the status of the permit appeal;

(d) Maintain the Forestar Permits in effect and in good standing during the term of this Agreement to authorize the delivery and utilization of the Groundwater for municipal purposes by Hays County or assigns, subject to Force Majeure; and

(e) Construct in a timely manner any Well Facilities necessary to meet Forestar's obligations under this Agreement. For the purposes of this Section, "in a timely manner" shall mean no later than the end of the third Contract Year of this Agreement.

**Section 3.2 Hays County's Responsibilities.** In addition to the other obligations prescribed herein, Hays County shall:

(a) require that (i) all of its wholesale customers adopt water conservation and drought management plans consistent with state law and the rules of the Lost Pines GCD, and (ii) all of its retail customers observe and follow any applicable adopted water conservation and drought management plan;

(b) insure that in any resale contract of the water, that such contracts include water conservation and drought management plans if Hays County's customers resell the water;

(c) insure that it provides Forestar with copies of all water conservation and drought management plans adopted by Hays County or its wholesale customers to provide to Lost Pines GCD;

(d) avoid wasting any water provided under this Agreement; and

(e) require its wholesale and retail customers to comply with all applicable rules of the Lost Pines GCD and the applicable terms of the Forestar Permits relating to the ultimate use of the Permitted Water.

(f) within forty-five (45) days after the Effective Date, have the duly elected Criminal District Attorney of Hays County (or some other requestor authorized by law) request an opinion of the Attorney General of the State of Texas regarding Hays County's authority to enter into and carry out the transactions contemplated by this Agreement with the use of *ad valorem* tax revenues for payment of all costs arising hereunder.

## **ARTICLE 4**

### **PURCHASE, RESERVATION AND SUPPLY OF WATER**

**Section 4.1 Hays County's Purchase of Water.** Hays County's purchase of the rights to 45,000 acre-feet of groundwater per annum from the Water Project at the Base Rate during each Contract Year of the Initial Term, and during any Extended Term, shall entitle Hays County to reserve the same for use during the Contract Year for exempt purposes and, to the extent available under the Forestar Permits, to receive the same at the Delivery Point in consideration of the payment of the Delivery Rate during each Contract Year.

**Section 4.2     Forestar's Reservation of Water.**

(a) Forestar shall reserve the Groundwater under the Forestar Leases for the exclusive use of Hays County in a quantity equal to 45,000 acre-feet per annum (the "Reserved Groundwater") each Contract Year during the term of this Agreement. The Reserved Groundwater shall be solely from the Simsboro Aquifer and not from other groundwater aquifers or sources.

(b) Forestar shall maintain the Forestar Leases in effect and in good standing as necessary to maintain its rights to the Reserved Groundwater, subject to permitting by Lost Pines GCD, during the term of this Agreement for the benefit of Hays County or its assigns.

(c) Forestar shall maintain the Forestar Permits in effect and good standing during the term of this Agreement for the benefit of Hays County or its assigns.

(d) The Parties acknowledge and agree that Forestar shall have no obligation to deliver the Reserved Groundwater to Hays County, and Hays County shall have no right to take delivery of the Reserved Groundwater, except for exempt uses, and/or that portion of the Reserved Groundwater that qualifies as Permitted Water authorized for production pursuant to the Forestar Permits.

(e) At any time before exercising the Long Term Purchase Option, Hays County may decrease the quantity of the Reserved Groundwater by providing not less than 12 months prior written notice of such reduction, but during the term of this Agreement, may never reduce the quantity of Reserved Groundwater to less than the quantity of Permitted Water in effect at the time of issuance of such notice.

**Section 4.3     Water Delivery Limitations.** Unless otherwise agreed to in writing by the Parties, Forestar's obligation to deliver water to Hays County at the Delivery Point is subject to the following express limitations:

(a) Except for exempt uses, only Groundwater authorized pursuant to the Forestar Permits shall be deliverable to Hays County. All other Reserved Groundwater covered by this Agreement shall be reserved for the exclusive benefit of Hays County during the Contract Year in which it was reserved.

(b) All water reserved to Hays County *in situ* shall be available for delivery to Hays County either for exempt uses, or upon permitting by the Lost Pines Groundwater Conservation District for Permitted uses during the Contract Year. Unless permitted, the Reserved Groundwater shall not be deliverable except for exempt uses.

(c) Title to, and responsibility for, all groundwater reserved for and/or to be supplied to Hays County pursuant to this Agreement shall be in Forestar until such time as the water passes through and is measured at the meter for delivery to Hays County at the Delivery Point. Once the water reaches the Delivery Point, all title to and responsibility for the water, including by way of example only, any issues related to water quality, water pressure and/or water volume, shall pass to Hays County.

**Section 4.4 Costs of Groundwater.** During the term of this Agreement, Hays County shall pay for the Groundwater in accordance with the provisions of Article V below.

**Section 4.5 Groundwater District Permits.** Hays County expressly agrees to cooperate with Forestar in pursuing all permits, permit amendments and renewals, and any other approvals necessary or desirable to develop the availability of 45,000 acre-feet of water per annum for beneficial use by Hays County or its assigns pursuant to this Agreement, including Forestar's pursuit on administrative and judicial (if necessary) appeal of the Forestar Applications to secure permits for the balance of the 33,000 acre-feet of groundwater per annum reserved pursuant to this Agreement; provided, however, that Hays County shall have no obligation to incur any financial obligations other than those described in Section 5 below. In the event Hays County elects to incur any such financial obligations at Forestar's request, Forestar agrees to reimburse Hays County for its reasonable and actual out-of-pocket expenses associated with such cooperation within thirty (30) days after receipt of any written request for reimbursement by Hays County.

**Section 4.6 Meter Calibration.**

(a) As part of the Well Facilities, Forestar will install, own, operate and maintain one or more meters located at or near the Delivery Point. The meters shall be tested for accuracy by, and at the expense of, Forestar, at least once each calendar year at intervals of approximately every twelve (12) months, and a report of such test shall be furnished to Hays County within thirty (30) days after completion of the test. The meter(s) shall also be calibrated by, and at the expense of Forestar, at any time a meter is not found to be operating within five (5) percent high or low of accuracy (or such other smaller amount as required by any applicable Lost Pines GCD rules). Forestar shall give notice to Hays County at least two (2) weeks in advance and allow Hays County to witness the test. In addition, the meter(s) may be tested and calibrated at any other reasonable time by either Party to this Agreement, provided that the Party making the test or calibration shall notify the other Party in writing at least two (2) weeks in advance and allow the other Party to witness the calibration. The expense of such additional test or calibration shall be borne by the Party requesting the test if a meter is found to be within American Water Works Association (AWWA) standards for the type and size of meter and by Forestar if the meter is found to not be within American Water Works Association (AWWA) standards for the type and size of meter.

(b) If, as a result of any test, a meter is found to be registering inaccurately (in excess of American Water Works Association (AWWA) standards for the type and size of meter), the readings of the meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon or, if no such period is known or agreed upon, the shorter of:

- (1) a period extending back either sixty (60) days from the date of demand for the test or, if no demand for the test was made, sixty (60) days from the date of the test; or
- (2) a period extending back one half of the time elapsed since the last previous test;

and the records of the readings, and of all payments which have been made on the basis of such readings, shall be adjusted accordingly.

(c) Nothing in this Agreement shall prevent Hays County from installing a meter at or in the vicinity of Forestar's meters to check the accuracy of Forestar's meter(s), and Forestar expressly consents to such installation.

## ARTICLE 5

### CHARGES AND BILLING

**Section 5.1 General.** Except as otherwise provided in Article 10 below, Hays County shall pay Forestar for Groundwater pursuant to this Article 5.

**Section 5.2 Fees, Rates, and Adjustments during the Initial Term.** During the Initial Term of this Agreement, the following rates for Groundwater shall apply:

(a) **Base Rate.** The Base Rate agreed to by the Parties shall be \$1,000,000.00 per Contract Year for the 45,000 acre-feet of Groundwater available pursuant to the Forestar leases (\$22.2222 per acre-foot). The Base Rate shall be payable on or before October 1<sup>st</sup> of each Contract Year during the Initial Term.

(b) **Delivered Rate.** The Delivered Rate agreed to by the parties is \$100 per acre-foot of Groundwater per annum available for beneficial use by Hays County for either exempt or permitted purposes requested by Hays County and metered at the Delivery Point.

Hays County shall pay Forestar the difference between the Base Rate and the Delivered Rate based upon the number of acre-feet of water requested and metered at the Delivery Point. All payments shall be made within thirty (30) business days of the date Hays County receives a written invoice for the metered water from Forestar. Notwithstanding anything in this subsection (b) to the contrary, during the first three (3) Contract Years of the Initial Term the first 100 acre-feet metered at the Delivery Point shall be priced at the Base Rate, rather than the Delivered Rate.

(c) **Rate Adjustments.** Unless otherwise agreed to in writing by the Parties, the Base Rate and Delivered Rate shall not be subject to adjustment during the Initial Term:

**Section 5.3 Fees, Rates, and Adjustments during the Extended Term.**

(a) **Base Rate.**

(i) During the Extended Term, the Base Rate agreed to by the Parties shall be \$75.00 per acre-foot per Contract Year for that volume of Groundwater up to 45,000 acre-feet of Groundwater available pursuant to the Forestar Leases that has been permitted by the Lost Pines Groundwater District and available for municipal use in Hays County at the beginning of each Contract Year during the Extended Term.

(ii) During the Extended Term, the Base Rate shall be payable on or before October 1st of each Contract Year commencing on October 1st of the first Contract Year of the Extended Term, and on October 1st of each succeeding Contract Year during the Extended Term, the Base Rate shall be adjusted by multiplying the then current Base Rate by the then current (CPI) as computed by the United States Department of Labor, Bureau of Labor Statistics (the Bureau), or any other agency succeeding to the Bureau's function of computing the CPI, and adding that amount to the per acre-foot Base Rate price for each acre-foot of Groundwater out of the 45,000 acre-feet Permitted for municipal use (the "CPI Adjustment").

(b) **Delivered Rate.** During the Extended Term, the Delivered Rate shall be payable on or before October 1<sup>st</sup> of each Contract Year commencing on October 1<sup>st</sup> of the first Contract Year of the Extended Term, and on October 1<sup>st</sup> of each succeeding Contract Year during the Extended Term, the Delivered Rate shall be adjusted by multiplying the then current Delivered Rate by the then current (CPI) as computed by the United States Department of Labor, Bureau of Labor Statistics (the Bureau), or any other agency succeeding to the Bureau's function of computing the CPI, and adding that amount to the per acre-foot Delivered Rate price for each acre-foot metered at the Delivery Point (the "CPI Adjustment"). The Delivered Rate, as the same has been modified by the CPI Adjustment for each acre-foot of Groundwater requested by Hays County for either exempt or permitted purposes and metered at the Delivery Point, subject, however, to the following special conditions:

(i) the Delivered Rate applies to all water requested by Hays County, metered and delivered to Hays County at the Delivery Point for lawful use, whether or not the water is permitted; and

(ii) Hays County shall pay Forestar the difference between the Base Rate and the Delivered Rate based upon the number of acre-feet of water requested by Hays County and metered at the Delivery Point. All payments shall be made within thirty (30) business days of the date Forestar delivers its invoice for the metered water to Hays County.

**Section 5.4 Maximum CPI Adjustments.** Notwithstanding any provision of this Agreement to the contrary, the CPI Adjustment for any Contract Year shall not exceed eight percent (8%) in that Contract Year relative to the prior Contract Year.

**Section 5.5 Payments.**

(a) From and after the A.G. Confirmation Date (as defined below), Hays County shall be obligated to pay Forestar the Base Rate each Contract Year during the term of this Agreement. The amounts due shall be payable in full on or before October 1<sup>st</sup> during the term of this Agreement. Hays County's payment during the first Contract Year shall be placed in escrow pursuant to Section 7.1 below and shall be due and payable per the Escrow Agreement attached as **Exhibit "A"**. The date on which the Attorney General of the State of Texas renders an opinion confirming Hays County's authority to enter into and carry out the transactions contemplated by this Agreement including the use of *ad valorem* tax revenues for payment of all costs arising hereunder is herein referred to as the "A.G. Confirmation Date"). In the event the

is after October 1, then the Base Rate for the initial Contract Year of the Initial Term shall be pro-rated accordingly.

(b) In the event Hays County makes payment for water under a category that contemplates the same will be reserved for Hays County *in situ*, and during the same Contract Year the water is actually requested by and delivered to Hays County, Hays County shall pay Forestar the difference in the applicable Base Rate and the Delivered Rate multiplied times the number of acre-feet requested by Hays County, and metered at the Delivery Point.

(c) All payments due and owing to Forestar by Hays County pursuant to this Agreement are for goods and services within the meaning of Chapter 271, Texas Loc. Gov't Code.

(d) In the event that the Attorney General of the State of Texas fails to render an opinion during the first Contract Year that confirms Hays County's authority to enter into and carry out the transactions contemplated by this Agreement with the use of *ad valorem* tax revenues, then this Agreement shall be null and void for all purposes and all escrowed funds shall be returned to Hays County per the Escrow Agreement.

#### **Section 5.6 Delinquency in Payment.**

(a) All amounts due and owing to Forestar by Hays County pursuant to this Agreement shall, if not paid when due, bear interest in compliance with §2251.025 of the Texas Government Code, beginning 31 days after the date of the invoice; provided, however, if the delinquent party is an assignee, not the County, then the interest rate due and payable on the outstanding balance shall be the maximum rate permitted by law, provided that such rate shall never be usurious. Any interest earned on the unpaid amount shall be considered a part of the original amount due.

(b) If any amount due and owing is disputed by Hays County, or its assigns, and is placed with an attorney for collection by Forestar, then, in addition to all other terms and conditions provided for by this Agreement, the prevailing party in the dispute may be ordered to pay court costs and attorney's fees, as allowed by Tex. Local Gov't Code § 271.159.

(c) Hays County shall have the right to withhold any payment to Forestar hereunder that is under protest and/or disputed, but the disputed payment amount shall be set aside by the County and placed in a reserve fund and held until the protest is resolved. Forestar shall not have the right to withhold delivery of water to Hays County for which payment is made by Hays County prior to termination of this Agreement, even if Hays County is then in default. Notwithstanding the foregoing, in the event that Hays County shall withhold any payment hereunder (after Notice and Cure pursuant to Section 8.1), Forestar shall be entitled to withhold delivery of water for which required payment is not made to Hays County until the unauthorized delinquent payment is paid to Forestar.



## ARTICLE 6

### PLEDGE OF REVENUES BY HAYS COUNTY

**Section 6.1 Project Revenues.** Hays County represents and covenants that all payments to be made to Forestar pursuant to this Agreement shall constitute reasonable and necessary expenditures by Hays County and that all such payments will be made from current or appropriated funds of Hays County. Hays County further covenants and agrees (i) to fix and collect rates and charges sufficient to produce revenues necessary to make all payments due and owing to Forestar pursuant to this Agreement, and (ii) to budget and appropriate funds in its annual budgets adopted by Hays County each Contract Year.

**Section 6.2 Expenses and Payments.** Hays County represents that it has determined that the water supply to be obtained pursuant to this Agreement is necessary and essential to Hays County's present and future population; therefore, and, accordingly, all payments required by this Agreement to be made by Hays County, including the payments contemplated herein, shall constitute reasonable and necessary operating expenses of Hays County.

**Section 6.3 Appropriations** Despite the foregoing, should the Hays County Commissioners Court fail to appropriate funding to satisfy the terms and conditions of this Agreement for the succeeding Contract Year, then Hays County may terminate this Agreement upon ninety (90) days notice to Forestar; provided, however, that the County shall remain liable for all obligations which accrue prior to the effective date of the termination, including any accrued obligation to make payments. Upon receipt of any notice of termination from Hays County, Forestar may market and sell the groundwater available pursuant to this Agreement to any third party.

## ARTICLE 7

### ESCROW, TERM OF AGREEMENT, TERMINATION AND RIGHTS AFTER TERMINATION

**Section 7.1 Escrow.** Per the Escrow Agreement, within thirty (30) days of the Effective Date of this Agreement, Hays County shall deliver the payment for the first Contract Year in the amount prescribed by Section 5.5 (a) (the "Escrow Deposit") in cash, cashier's check, or other immediately available and good funds to the Escrow Agent. The Escrow Agent agrees to receive, hold and disburse the Escrow Deposit (which together with any interest accrued thereon shall be referred to collectively as the "Escrow Funds") in accordance with all terms and provisions of the Escrow Agreement.

**Section 7.2 Initial Term.** This Agreement shall be effective as of the Effective Date and, unless it is terminated earlier pursuant to any applicable provision of this Agreement, shall continue in effect for a term of five (5) Contract Years (the "Initial Term") ending at 12:00 a.m., Central Daylight Savings Time, on October 1<sup>st</sup> of the Calendar Year immediately following the fifth Contract Year (the "Termination Date"). This Agreement shall terminate upon the Termination Date, unless extended for an Extended Term under Section 7.2.

**Section 7.3 Extended Term.** Hays County is granted the option (the "Extension Option") to extend the term of this Agreement for an additional term of five (5) Contract Years ("Extended Term") beginning at 12:01 a.m., Central Daylight Savings Time, on October 1<sup>st</sup> of the Calendar Year immediately following the fifth Contract Year by giving written notice to Forestar at least ninety (90) calendar days prior to the anticipated Termination Date of the Initial Term of the exercise of such Extension Option (the "Extension Notice).

**Section 7.4 Rights after Termination.** Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities that accrued prior to the effective date of such termination, including Hays County's obligation to make payments for water accruing on October 1<sup>st</sup> of any Contract Year prior to the termination. Upon receipt of any notice of termination from Hays County, Forestar may market and sell the groundwater available pursuant to this Agreement to any third party.

**Section 7.5 Termination.**

(a) Notwithstanding any other provision of this Agreement to the contrary, Hays County may terminate this Agreement upon ninety (90) calendar days prior written notice to Forestar; provided, however, that such notice shall not release the Hays County from any obligation that accrues under this Agreement during the ninety (90) day period between the date of notice and the resulting date of termination, including without limitation the obligation to make any payment (without a right to prorate or offset the amount due and owing and/or delivery of water); and

(b) The Parties agree that the notice of termination contemplated by this Section 7.4 may be given at the same time as a "Notice and Cure" pursuant to Section 8.1, and that the ninety (90) day notice of termination can run concurrently with the applicable cure period prescribed in Section 8.1 such that the Agreement may terminate, at the option of the Terminating Party, upon the expiration of the ninety (90) day notice period irrespective of the defaulting Party's efforts to cure the default.

**ARTICLE 8**

**NOTICE AND CURE; DEFAULTS**

**Section 8.1 Notice and Cure.** Notwithstanding any other provision hereof, if a Party shall fail to pay any required sum of money or fail to perform any obligation hereunder, the defaulting Party shall be entitled to notice of such failure and the opportunity to cure such failure ("Notice and Cure") as prescribed in this Section 8.1. Any such notice is to be given in accordance with the requirements of Section 11.12 "Notice to Parties."

(a) **Failure to Pay.** In the event that a Party shall fail to pay any sum of money that is owed hereunder, either at the time or in the amount provided herein, such Party failing to pay shall be entitled to a period of ten (10) business days from the date written notice of such failure to pay is given by the other Party in order to cure such failure to pay. Any delinquency in

required payment shall be assessed interest from the first date of the delinquency as described in Section 5.6.

(b) **Failure to Perform.** In the event that a Party shall fail to perform any obligation (other than a payment obligation) hereunder, either at the time or in the manner provided herein, such Party failing to perform shall be entitled to a period of sixty (60) calendar days from the date notice of such failure to perform is given by the other Party in order to cure such failure to perform; provided that if such failure to perform cannot reasonably be cured within such sixty (60) calendar day period, and such non-performing Party shall commence curative actions within such sixty (60) calendar day period the cure period shall continue for as long as the non-performing Party shall diligently proceed with such curative actions.

(c) **Default.** If a Party shall fail to timely pay or timely perform all of its obligations under this Agreement and does not cure such failure after receipt of notice of failure to pay or perform, as applicable, and opportunity to cure to the extent entitled under Subsections (a) and (b) of this Section, such nonpaying or non-performing Party shall be deemed to be in default under this Agreement, and the non-defaulting Party shall be entitled to exercise all rights and/or remedies available pursuant to this Agreement, including the right of termination. This Section shall not apply to a failure to pay reasonably-disputed invoices if the County has notified Forestar of the dispute and set aside funds pursuant to Section 5.6(c), above.

(d) **Notice of Termination.** In the event the non-defaulting Party also serves the defaulting Party with a termination notice pursuant to Section 7.4 of this Agreement, the defaulting Party shall remain obligated to perform all obligations, including the duty to cure any default, which arose or accrued or accrues prior to the expiration of the ninety (90) day notice and the resulting termination date.

**Section 8.2 Waiver.** No failure on the part of either Party to this Agreement to require the performance by the other Party of any portion of this Agreement shall in any way affect either Party's right to enforce such provision, nor shall any waiver by either Party be taken or held to be a waiver of any other provision. No rights under this Agreement may be waived and no modification or amendment to this Agreement may be made except by written amendment executed by both Parties.

**Section 8.3 Remedies.** Recognizing that Forestar's and Hays County's undertakings as provided in this Agreement are obligations, the failure in the payment or performance of which cannot be adequately compensated in money damages, Forestar and Hays County agree that, the rights and remedies set forth herein in this Agreement shall not be considered exclusive, and in the event of any default, the other Party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available to such Party.

## **ARTICLE 9**

### **WATER QUALITY**

#### **Section 9.1 Quality of Water.**

(a) Forestar's obligations pursuant to this Agreement regarding the quality of the Groundwater to be produced from the Forestar Leases are limited to the delivery of native quality groundwater to be produced from the Simsboro Aquifer underlying the Forestar Leases in accordance with the terms and conditions of this Agreement.

(b) The Parties acknowledge that it is their mutual desire and objective to develop the Groundwater available from the Forestar Leases as a regional municipal water supply for beneficial use in Hays County and, therefore, they further agree as follows:

(i) Forestar agrees that to protect the quality of the groundwater *in situ* and as the same may be produced at the wellhead, that Forestar will cause an easement with a one hundred fifty (150) foot circumference to be imposed at any well site it constructs in the Forestar Well Field for the purposes of delivering water to Hays County in accordance with the Rules of TCEQ as currently prescribed in Chapter 290 (30 TAC).

(ii) Beginning in the first Contract Year, and continuing throughout the term of the Agreement, Forestar agrees to conduct monthly water quality testing and sampling of each existing well within the Forestar Well Field constructed for the purpose of delivery of water to Hays County, and provide copies of the test results to Hays County.

(iii) In recognition of Hays County's expectation to use the groundwater deliverable pursuant to this Agreement directly, or through resale to other water purveyors, for municipal purposes, the Parties agree that as part of the anticipated Long Term Water Supply Agreement, if Hays County exercises the Option granted in Article 10 of this Agreement, then Forestar shall take all actions necessary, at its sole cost and expense, to ensure that the quality of Groundwater delivered to Hays County at the Delivery Point meets or exceeds the secondary standards for constituents for drinking water prescribed in Section 290.105 (30 TAC) of the TECQ's Rules ), as amended from time to time (the "Secondary Standards"). In the event that the quality of Groundwater at the Delivery Point does not meet the Secondary Standards, the Parties agree as follows:

- (1) Hays County's obligations to provide payment to Forestar shall be abated until such time as the water meets the Secondary Standards;
- (2) Subject to Forestar's right to cure in Section 8.1 of this Agreement, Hays County may terminate the Agreement upon thirty (30) calendar days prior written notice to Forestar; and/or
- (3) Hays County may install, at its sole cost and expense, facilities required for treatment of the groundwater on the property subject to the Forestar Leases or at such other location(s) as may be identified by Hays County.

(iv) The Parties further agree that in the event of contamination or reduction in quality of the native Groundwater available pursuant to this Agreement triggering Hays County's rights of abatement pursuant to subsection (b)(iii) above, that during the period of any abatement, Hays County shall be entitled to receive a pro rata rebate of any funds paid during that Contract Year. The prorated rebate shall be calculated on the basis of either (1) the number of months remaining in the Contract Year if no water has been delivered to Hays County in that Contract Year, or (2)

if water has been delivered during the Contract Year, than after making appropriate adjustments for the cost of Delivered Water, the remaining number of months in the Contract Year.

## **ARTICLE 10**

### **LONG TERM SUPPLY OPTION**

**Section 10.1 Option.** In consideration of the payment of an additional Ten Dollars (\$10.00) paid in cash to Forestar on the Effective Date, Forestar grants Hays County an option (the "Long Term Purchase Option") to secure up to 45,000 acre-feet per year of Groundwater Permitted by the Lost Pines Groundwater Conservation District with an initial term of at least fifty (50) years (the "Long Term Water Supply Term"). Such option must be exercised by the provision of written notice by Hays County to Forestar during the Initial Term or Extended Term, which notice shall specify the quantity of Groundwater to be reserved by, and made available by Forestar to, Hays County for the duration of Long Term Water Supply Term. The quantity of Groundwater may not exceed the quantity of Permitted Water then in effect, and its delivery shall be subject to the provisions of such Permits and the applicable Rules of the Lost Pines Groundwater Conservation District, and applicable statutes. Except as otherwise agreed in writing by the Parties, the provisions of this Article 10 apply to the delivery of Groundwater by Forestar to Hays County during the Long Term Water Supply Term.

#### **Section 10.2 Price.**

(a) Base Rate: \$75.00 per acre-foot, per annum, payable in advance on the first day of each Contract Year, and adjusted annually by changes in the Consumer Price Index or "CPI" as defined in Article 5 of this Agreement. The Base Rate applies only to Permitted Water and then available for delivery and beneficial use by Hays County under the Forestar Permits then in effect;

(b) Delivered Rate (for water requested and metered): \$100.00 per acre-foot per annum adjusted annually by increases in the CPI as defined in Article 5 of this Agreement; provided that the Delivered Rate actually paid shall be the difference between the per acre-foot Base Rate paid in advance and the Delivered Rate for that Contract Year.

(c) The Base Rate and the Delivered Rate, (i) though established at \$75.00 and \$100.00 per acre foot, respectively, in the first Contract Year of the Long Term Water Supply Term, will reflect the annual CPI adjustments to the Base Rate and Delivered Rate, as the same were made during the Extended Term prior to exercise of the Long Term Purchase Option under this Agreement, provided, however, (ii) if Hays County charges a customer more for the water than the Delivered Rate charged by Forestar (exclusive of treatment, storage and/or delivery costs incurred by the County, as determined in the County's reasonable discretion), then in addition to the Delivered Rate, Hays County shall pay Forestar fifty percent (50%) of any price premium or increase charged to the assigns by Hays County. The obligation to provide payment of fifty percent (50%) of the price premium hereunder shall be personal to Hays County for so long as it remains a party to this Agreement only, and in the event of assignment of rights by Hays County to any third party, the premium payment obligation shall terminate for all purposes.

**Section 10.3 Delivery Point.** The Delivery Point for purposes of payment of the Delivered Rate shall be at the wellhead in the Forestar Well Field, unless otherwise negotiated by the Parties in the Long Term Water Supply Agreement.

**Section 10.4 Water Quality.** Water quality provisions consistent with those presented in Article 9 of this Agreement shall be negotiated by the Parties for inclusion in the Long Term Water Supply Agreement based upon the facts and circumstances know and in place at the time of the negotiations.

**Section 10.5 Treatment & Delivery.** Terms, including costs, for any treatment and/or transport of water beyond the Delivery Point described in Section 10.3 above, shall be Hays County's responsibility unless otherwise negotiated by the Parties as part of the Long Term Water Supply Agreement.

**Section 10.6 Forestar Leases and Permits.**

(a) In the event Hays County exercises the Long Term Purchase Option, then Forestar shall continue to maintain the Forestar Leases in effect for the duration of the Long Term Water Supply Term.

(b) In the event Hays County exercises the Long Term Purchase Option, then Forestar shall take all actions necessary at its sole cost and expense to maintain the Forestar Leases in effect for the duration of the of the Long Term Water Supply Term as necessary to meet Forestar's delivery obligation during the Long Term Water Supply Term, including the filing of applications for the renewal of the Forestar Permits with the Lost Pines groundwater Conservation District.

(c) Forestar may utilize its rights under the Forestar Leases for any lawful purpose; provided, however, Forestar shall not utilize such rights to obtain water from the Simsboro Aquifer unless: (i) such use is exempt from permitted by Lost Pines GCD; or (ii) such use does not interfere with Hays County's receipt and entitlement of water at the Delivery Point.

**Section 10.7 Construction of Treatment and Transportation Facilities.** Unless the Parties enter into a separate written agreement providing for Forestar to construct and deliver Groundwater to an alternative Delivery Point agreed upon by the Parties, then Hays County or its assigns shall be responsible for design, construction, ownership, operation, maintenance, repair and replacement of the Transportation Facilities and the Treatment Facilities.

**Section 10.8 Costs of Delivery.** Except as otherwise agreed by the Parties, the Groundwater will be delivered from the Delivery Point to its intended place of use in Hays County at the sole cost and expense of Hays County, and Forestar is in no way responsible for constructing or operating the Delivery Facilities nor any disruption in service to customers due to a problem with the Delivery Facilities.

**Section 10.9 Exercise of Forestar Lease Rights.** Forestar agrees that Hays County may utilize, on a non-exclusive basis, and at no additional charge above or beyond any payments that may be due for the Hays County requested use or resulting surface damages pursuant to

terms of the Forestar Leases and the easements granted to Forestar thereunder, all of which payment obligations are identified on Exhibit "B" attached hereto, Forestar's rights under the Forestar Leases to construct, extend, operate, maintain, repair and replace any Delivery Facilities necessary, appropriate or convenient to enable Hays County to receive, store, treat and transport Permitted Water made available to Hays County under the Agreement as follows:

(i) Forestar and Hays County shall cooperate with each other to identify mutually acceptable easement locations for the benefit of Hays County to construct ground storage, pumps and underground distribution lines as necessary to produce and transport the Permitted Water from the Delivery Point to Delivery Facilities located outside of the area covered by the Forestar Leases, subject to any limitations in the Forestar Leases ("Easements"), which Forestar hereby represents would not materially interfere with Hays County's ability to construct ground storage, pumps and underground distribution lines as necessary to produce and transport the Permitted Water. The Easements shall initially include a construction easement of appropriate size and width but once the Delivery Facilities have been installed, the Easements shall be limited to an area reasonably necessary to contain the Delivery Facilities together with provisions for access for routine repairs and maintenance. Forestar agrees to provide copies of all relevant provisions in the Forestar Leases to Hays County upon request so that Hays County may identify any payment obligations and/or restrictions applicable to the construction of ground storage, pumps and underground distribution lines to produce and transport the Permitted Water.

(ii) Forestar shall retain the right to use the Easements in a manner which does not interfere with the purposes hereby granted to Hays County, and shall be responsible for a pro rata share of costs associated with such Easements according to the quantity of groundwater produced and transported by Forestar. Once the Easements have been mutually agreed upon and surveyed at Hays County's expense, Forestar shall assign non-exclusive interests in them to Hays County subject to the rights authorized by the Forestar Leases and the terms of the Agreement and other matters of record, but free and clear of any liens, claims or encumbrances created by, through or under Forestar, but not otherwise.

(iii) In the event that this Agreement is terminated by its terms or through Hays County's default, Hays County shall be deemed to have declared the Easements and any facilities located therein surplus to its needs and no longer needed and Forestar, at its option, may elect to terminate the Easements upon ninety (90) days written notice to Hays County and either (i) declare that title to any facilities in the Easements shall be deemed to vest in Forestar or (ii) require that Hays County remove its facilities from the Easements and restore the surface of the Easements to their original condition.

(iv) As required in the Forestar Leases and provided no other facilities are located within the Easements, Hays County shall promptly restore the surface of the Easements to their original condition to the extent reasonably practical after doing any work or construction within the Easements.

(v) Nothing in this Article 10 contemplates or is intended to be interpreted to require Forestar to acquire any new, additional, different or amended Easements for the benefit of Hays County or its assigns.

## **ARTICLE 11**

### **OTHER PROVISIONS**

#### **Section 11.1 Transfers and Assignability by the Parties.**

**(a) Assignment.**

(i) With either Party's prior written consent, which consent shall not be unreasonably withheld or delayed, a Party shall have the right, to assign its rights and obligations pursuant to this Agreement to a successor entity in whole or in part upon delivery of written notice of the same to the non-assigning Party; provided, however, that:

1. Said assignee is fully qualified to perform all of the assigning Party's obligations pursuant to this Agreement, including without limitation, the obligation to make payments;

2. Said assignee acknowledges acceptance of the assignment and willingness to perform the obligations in writing, including as applicable the Waiver of Sovereign Immunity; and

3. Said assignee subject to terms and conditions that may be imposed as a condition to protect financing of the Water Project.

4. In the case of a partial assignment of this Agreement, the partial assignment does not (1) impair or frustrate either the purpose or continued implementation of this Agreement, or (2) the performance of the obligations and receipt of the benefits of each respective Party accruing under the terms of this Agreement.

(ii) Notwithstanding the foregoing provision regarding assignment, Forestar hereby consents to assignment or partial assignment of this Agreement by Hays County to any of the following entities: 1) Hays Caldwell Public Utility Agency, 2) West Travis County Public Utility Agency, 3) any municipality within the area authorized by the Forestar Permits, and 4) any other political subdivision within the area authorized by the Forestar Permits.

**(b) Liability and Release.**

(i) The assignment to any entity may be made without recourse to and with the express release of the Assignor, but only with respect to the future performance of the Assignor's obligations under this Agreement as to the specific rights and obligations assigned and no others.



(ii) the Assignor shall retain full liability for all obligations accruing prior to the effective date of the assignment, as well as the full and faithful performance of all obligations and/or liability incurred or accruing pursuant to this Agreement prior to the effective date of the assignment.

(iii) the Assignor's assignment to a qualified successor entity shall become effective ten (10) business days after the date the non-assigning Party receives a copy of the written assignment executed by the assignee affirmatively evidencing the assignee's willingness and ability to fully and faithfully perform the obligations of the Assignor pursuant to this Agreement.

### **Section 11.2 Force Majeure.**

(a) If for any reason of Force Majeure, either Forestar or Hays County shall be rendered unable, wholly or in part, to carry out their respective obligations under this Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period.

(b) In the event that Forestar is unable to provide a reservation for Groundwater or to deliver Groundwater in accordance with the terms of this Agreement due to an event of Force Majeure, then during the period Forestar is unable to provide a reservation for water or to deliver water, Hays County's obligation to pay for that portion of water is suspended. Any Base Charge paid by Hays County to Forestar for such period shall be reimbursed by Forestar within thirty (30) days after the conclusion of the Force Majeure period.

### **Section 11.3 Warranties, Representations and Disclaimers of the Parties.**

(a) **Except as specifically set forth herein, Forestar makes no warranties or representations with respect to either the quantity or quality of the native groundwater in the Simsboro Aquifer contemplated to be available for delivery pursuant to this Agreement, and Forestar expressly disclaims any and all warranties and/or representations, express and/or implied, with respect to both the quantity and quality of the native groundwater from the Simsboro Aquifer contemplated to be available for delivery pursuant to this Agreement, including any and all warranties related to fitness and/or purpose for any particular and/or intended use or purpose of Hays County, including municipal uses and purposes.**

(b) Forestar has disclosed to Hays County, and Hays County acknowledges, that the Lost Pines Groundwater Conservation District operating in Lee and Bastrop Counties, Texas,

(i) has regulatory jurisdiction of the Forestar Leases and, therefore, the groundwater contemplated to be available for delivery pursuant to this Agreement; and

(ii) requires permits be obtained for the non-exempt municipal purposes contemplated by the Parties to this Agreement, including out-of-district transport; and

(iii) has authority in the future to lawfully restrict production of groundwater from time to time based upon good science requiring cutbacks or curtailments applied in a uniform and non-discriminator manner subject to the applicable rights of the affected permit holder; and

(iv) Production Permits issued are for a five (5) year period, subject to renewal, which renewal may be denied in whole or in part based upon good science and applicable laws and regulations.

(c) Forestar and Hays County agree to implement this Agreement and exercise the Forestar Permits in accordance with applicable laws and regulations for beneficial uses without waste.

**Section 11.4 Applicable Laws and Regulations.** This Agreement is subject to all Laws of any local, state, or federal governmental authority having jurisdiction over the Water Project. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the applicable rules of the TCEQ, or any successor agency, and, as applicable, any lawful rules or regulations, and permit conditions, of any groundwater conservation district with jurisdiction over the Water Project, including by way of example only the Lost Pines Groundwater Conservation District. The Parties agree to complete and file all required reports, and to otherwise comply with all applicable Laws typically enforced by any governmental authority.

**Section 11.5 Further Assurances.** Each of the Parties shall take all further actions and shall execute and deliver to the other Party any other document or instrument which is determined to be necessary or useful to fully carry out the transactions evidenced by this Agreement.

**Section 11.6 Entire Agreement.** This Agreement, including any amendment(s) or document(s) contemplated hereby, constitutes the entire agreement between Forestar and Hays County and supersedes any prior understanding and/or oral or written agreements between Forestar and Hays County respecting the subject matter of this Agreement.

**Section 11.7 Severability.** The provisions of this Agreement are severable and if, for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of said provision(s) shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision(s) had never been contained in this Agreement.

**Section 11.8 Captions.** The sections and captions contained herein are for convenience and reference only and are not intended to define, extend, or limit any provision of this Agreement.

**Section 11.9 No Third Party Beneficiaries.** This Agreement does not create any third party benefits to any person or entity other than the signatories hereto and their authorized assigns and/or successors in interest and is solely for the consideration herein expressed.

**Section 11.10 Governing Law & Venue/Attorney's Fees and Costs/Waiver of Sovereign Immunity.** This Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Texas. The Parties agree that the exclusive venue for any cause of action brought pursuant to this Agreement shall be proper in Hays County, Texas. In the event either Party hereto is required to institute any legal action to enforce this Agreement, the prevailing Party in such action shall be entitled to an award of its reasonable and necessary attorney's fees, and other costs, in accordance with Tex. Local Gov't Code §271.153. To the extent provided in Tex. Local Gov't Code §271.152, but not otherwise, Hays County affirmatively waives its claims and defenses related to sovereign immunity.

**Section 11.11 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**Section 11.12 Indemnification.** To the fullest extent allowed by law, the Parties agree to defend, indemnify, and hold harmless the other Party, and its officers, directors, agents, shareholders, members, representatives, employees, attorneys, affiliates, beneficiaries, subsidiaries, successors, and assigns from and against any and all liabilities and obligations (including, without limitation, reasonable attorney's fees, costs, and expenses) (i) arising from any failure of the Indemnifying Party to comply with applicable Laws, and/or (ii) arising from the indemnifying Party's breach of any covenant, representation, obligation or agreement of the this Agreement.

**Section 11.13 Waiver of Consequential Damages.** Notwithstanding anything in this Agreement to the contrary, (i) to the fullest extent allowed by law, Hays County hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Forestar or its representatives, agents or employees, and (ii) Forestar hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Hays County or its representatives, agents or employees.

**Section 11.14 Notices to the Parties.** All notices, payments, and communications required or allowed by this Agreement shall be in writing and be given by depositing the notice in the United States mail, postage prepaid, and registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail, if oral notice is also given. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the Parties shall be as follows:

**For Forestar:**  
Forestar Real Estate (USA) Group Inc.  
6300 Bee Cave Road

**For Hays County:**  
Hays County  
Hays County Courthouse

Bldg. Two, Suite 500  
Austin, Texas 78746

111 E. San Antonio, Suite 300  
San Marcos, Texas 78666

Attention: Mr. Brent Covert

Attention: County Judge

Telephone: (512) 433-5320  
Facsimile: (512) 433-5204

Telephone: (512) 393-2205  
Facsimile: (512) 393-2242

Either Party may change its address by giving written notice of the change to the other Party at least fourteen (14) days before the change becomes effective.

**Section 11.15 Waiver of Sovereign Immunity; Chapter 271, Texas Loc. Gov't Code.**

The Parties hereby agree that this Agreement constitutes an agreement for providing goods and/or services to Hays County subject to the provisions of Subchapter I of Chapter 271 of the Local Government Code and any successor statute(s).

**Section 11.16 Procedural Requirements; Notices.** Hays County warrants and represents that it has satisfied all administrative and procedural requirements prescribed by the Texas Open Meetings Act, codified as Chapter 551, Texas Gov't Code, to authorize and approve this Agreement and its execution, including having properly posted notice and, thereafter, taking action on the same in a public meeting of the Hays County Commissioners' Court, on *October 24<sup>th</sup>*, 2013.

**FORESTAR REAL ESTATE (USA)  
GROUP INC.**

**HAYS COUNTY, TEXAS acting by  
and through its Commissioners Court**

By: *Brent Covert*  
Brent Covert, Senior Vice President

By: *Bert Cobb*  
Bert Cobb, M.D., County Judge



ATTEST:

*Liz O. Gonzalez*  
By: *Liz O Gonzalez*  
Its: County Clerk Hays County Texas

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

Before me, the undersigned authority in and for said County and State, on this 3<sup>rd</sup> day of October, 2013, personally appeared Brent Covert, Senior Vice President of Forestar Real Estate (USA) Group Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed, and in the respective capacity therein stated.

Given under my hand and seal of office, this 3<sup>rd</sup> day of October, 2013.



Erin L Scarborough  
Notary Public

My Commission Expires: 11/15/2015

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF HAYS         §

Before me, the undersigned authority in and for said County and State, on this 1 day of October, 2013, personally appeared Bert Cobb, M.D., County Judge of Hays County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed on behalf of Hays County, and in the respective capacity therein stated.

Given under my hand and seal of office, this 1 day of October, 2013.



Michael Perkins  
Notary Public

My Commission Expires: 1-23-16

**EXHIBIT A**

**ESCROW AGREEMENT**

## ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is made and entered into as of the 4 day of October, 2013 (the "Effective Date"), by and between **HAYS COUNTY, TEXAS** ("Hays County"), CORRIDOR TITLE, LLC ("Escrow Agent") and **FORESTAR REAL ESTATE (USA) GROUP INC.**, a Delaware corporation ("Forestar"). Hays County and Forestar, together with their respective successors and/or assigns, may be referred to herein collectively as the "Parties" or individually as "Party."

### RECITALS

WHEREAS, Hays County has entered into a Water Reservation and Supply Agreement with Forestar whereby Hays County has agreed to purchase and reserve a groundwater supply of 45,000 acre-feet per annum available under Forestar Leases; and

WHEREAS, Hays County shall seek an opinion of the Attorney General of the State of Texas with the intent to confirm Hays County's authority to enter into and carry out the transactions contemplated by the Water Reservation and Supply Agreement including the use of *ad valorem* tax revenues for payment of all costs arising from the Water Reservation and Supply Agreement; and

WHEREAS, Hays County is willing to escrow funds for the first Contract Year payment as prescribed in the Water and Reservation and Supply Agreement.

### AGREEMENT

NOW THEREFORE, for and in consideration of the premises, recitals, mutual covenants and agreements herein contained, together with good and valuable consideration delivered by each of the Parties hereto, the receipt and sufficiency of which are hereby acknowledged, Hays County, Forestar, and the Escrow Agent do hereby mutually consent and agree as set forth in this Agreement.

#### 1. Opening of Escrow

1.1 Appointment of the Escrow Agent. Subject to the terms, provisions and conditions of this Agreement, Hays County and Forestar hereby designate the Escrow Agent as the escrow agent with respect to the escrow of the Escrow Deposit as hereinafter defined. The Escrow Agent hereby accepts the obligations and duties of escrow agent with regard to the retention and disposition of the Escrow Funds in accordance with the terms, provisions and conditions of this Agreement and agrees to serve as the escrow agent hereunder.

1.2 Deposit of Escrow Funds. Within thirty (30) days of the Effective Date of this Agreement, Hays County shall deliver the amount of One Million and No/100 Dollars (\$1,000,000.00) (the "Escrow Deposit") in cash, cashier's check, or other immediately available and good funds to Escrow Agent. The Escrow Agent agrees to receive, hold and disburse the Escrow Deposit (which together with any interest accrued thereon shall be referred to

collectively as the “Escrow Funds”) in accordance with all terms, provisions and conditions of this Agreement.

1.3 Administration of Escrow Funds. During the terms of the escrow created hereby, the Escrow Agent shall invest the Escrow Funds in certificates of deposit or money market funds or United States Treasury Certificates as directed by Hays County provided that such investments will enable the Parties hereto to obtain delivery and payment of the Escrow Funds on notice of not more than thirty 30 days. All interest or other income earned on the Escrow Funds shall be reported on Hays County’s federal taxpayer identification number. All income derived from the principal of the Escrow Funds during the term hereof shall become part of the Escrow Funds. Except for investment authority as stated above, Hays County and Forestar do hereby relinquish all right, title and interest in and to the Escrow Funds until such time as an event described in Article 2 hereof shall occur, at which time the Escrow Agent is authorized to release and deliver the Escrow Funds, in accordance with the provisions of Article 2 of this Agreement.

2. Conditions of Release, Disbursements, and Termination of the Escrow

2.1 Conditions of Release of Escrow Funds to Forestar. The Escrow Agent is hereby authorized to release the Escrow Funds to Forestar, in accordance with Section 2.2 herein, upon the occurrence of all of the following conditions (“Conditions of Release”):

- (a) the Attorney General of the State of Texas renders an opinion confirming Hays County’s authority to enter into and carry out the transactions contemplated by the Water Reservation and Supply Agreement, including the use of *ad valorem* tax revenues for payment of all costs arising from the Water Reservation and Supply Agreement, (“A.G. Confirmation”)
- (b) no later than seven (7) days after the issuance of the A.G. Confirmation by the Attorney General of the State of Texas, the Hays County Judge, acting on the authority of the Commissioners Court of Hays County and Forestar shall jointly execute a “Letter of Acceptance” of the A.G. Confirmation, the form of which Letter of Acceptance is attached to this agreement as **Exhibit “A”**; and
- (c) no later than fourteen (14) days after the conditions of 2.1 (a) and (b) are met, Hays County shall deliver to the Escrow Agent a copy of the A.G. Confirmation and Letter of Acceptance.

2.2 Disbursements to Forestar. No later than thirty (30) days after all of the Conditions of Release are met, the Escrow Agent is hereby authorized and instructed to make prompt disbursement to Forestar from the Escrow Funds, without the necessity of further authorization and/or instructions from Hays County or Forestar, in the amount of One Million and No/100 Dollars (\$1,000,000.00). Upon a distribution from the Escrow Funds, the Escrow Agent shall notify Hays County and Forestar of the distribution and shall notify Hays County of the remaining balance of the Escrow Funds after such distribution



2.3 Termination of Escrow. The escrow created hereby shall automatically terminate and all remaining Escrow Funds shall be disbursed to Hays County no later than thirty (30) days after the occurrence of any of the following events ("Termination Events"):

(a) the Disbursement of funds by the Escrow Agent pursuant to Sections 2.1 and 2.2 hereof; or

(b) Escrow Agent receives of a "Letter of Release", the form of which is attached as **Exhibit "B"**, executed by the Hays County Judge, acting on the authority of the Commissioners Court of Hays County, stating that an opinion of the Attorney General of the State of Texas has failed to confirm, within the Escrow Period pursuant to Section 2.4, Hays County's authority to enter into and carry out the transactions contemplated by the Water Reservation and Supply Agreement including the use of *ad valorem* tax revenues for payment of all costs arising from the Water Reservation and Supply Agreement. A copy of the Attorney General's opinion, if such an opinion exists, shall be included with the letter.

2.4 Escrow Period. Unless terminated pursuant to Section 2.3, the "Escrow Period" shall commence on the Effective Date of this Agreement and conclude on October 1, 2014. All Escrow Funds shall be disbursed to Hays County no later than thirty (30) days following the end of the Escrow Period.

### 3. The Escrow Agent

3.1 Receipt of Escrow Deposit. The Escrow Agent hereby, by its execution of this Agreement, acknowledges receipt of the Escrow Deposit.

3.2 Obligations of the Escrow Agent. The Escrow Agent, by its execution of this Escrow Agreement, covenants and agrees to faithfully perform and fulfill the terms of the escrow created hereby, pursuant to the terms, provisions and conditions hereof. The obligations of the Escrow Agent hereunder are performable at the offices of the Escrow Agent specified below.

3.3 Compensation. Escrow Agent shall earn a fee of \$ 1,500.00. The fee charged by the Escrow Agent shall be paid equally by Hays County and Forestar.

3.5 Disinterested Party. It is specifically understood and agreed by Hays County and Forestar that the Escrow Agent has no interest in and is not a party to any agreement under which the escrow created hereby may arise, other than the Escrow Agent's strict obligation to fully perform its duties as set forth herein. The Escrow Agent is not responsible or liable in any manner whatsoever for the sufficiency of the Escrow Deposit or the sufficiency, correctness, or validity of any Attorney General opinion.

3.6 Litigation. In the event that the Escrow Agent becomes involved in litigation in connection with the escrow created hereby, Hays County shall be responsible to indemnify and hold the Escrow Agent harmless from any and all liabilities, losses, costs, damages and expenses, including, without limitation, attorneys' fees and costs of investigation, suffered and/or incurred

by the Escrow Agent as a result thereof; unless such litigation is between Hays County and Forestar, in which event the losing party shall be required to reimburse the Escrow Agent for all of the aforementioned losses, costs, damages and expenses. Notwithstanding the foregoing, in the event that the Escrow Agent shall fail to fully perform its obligations under this Agreement as a result of an occurrence described in Section 3.8 below, neither Hays County nor Forestar shall have any obligations to indemnify the Escrow Agent under this Section 3.6.

3.7 Reliance. The Escrow Agent shall be protected and shall have the right to act upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent, in good faith and the exercise of reasonable prudence and discretion, believes to be genuine. The Escrow Agent shall be entitled to rely and act solely upon any written notice for which provisions is made herein; and in the event the Escrow Agent receives conflicting or contravening instructions from the Parties hereto with respect to the subject matter hereof, the Escrow Agent shall be entitled to rely upon the instructions contained herein, notwithstanding a conflicting or contravening instruction.

3.8 Limitation on Liability. The Escrow Agent shall not be liable for any act which the Escrow Agent may do or refrain from doing in connection with the conduct and consummation of the escrow created hereby, except for the Escrow Agent's negligence, willful misconduct, violation of the terms and provisions hereof, or violation of law.

3.9 Removal. Hays County and Forestar, jointly, may remove Escrow Agent, with or without cause and appoint a substitute Escrow Agent in which event Escrow Agent shall deliver the Escrow Funds as directed in writing by Hays County and Forestar.

3.10 Additional Terms and Conditions. The Escrow Agents additional terms and conditions, as contained on the attached **Exhibit "C,"** are hereby incorporated by reference and fully adopted herein as part of this Agreement.

#### 4. General Provisions

4.1 Legal Disability. The bankruptcy, insolvency or other legal disability of any of the parties hereto shall not affect the terms of the escrow created hereby or prevent the performance by the Escrow Agent of the duties of the Escrow Agent hereunder.

4.2 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

4.3 Notice. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be in writing and shall be deemed effectively given when personally delivered by electronic transmission or prepaid certified mail, return receipt requested, as follows:

Hays County: Hays County  
111 E. San Antonio St.  
Suite 300  
San Marcos, Texas 78666  
Attention: Judge Bert Cobb, M.D.  
Phone: (512) 393-2205

Forestar: Forestar Real Estate (USA) Group Inc.  
6300 Bee Cave Road  
Bldg. Two, Suite 500  
Austin, Texas 78746  
Attention: Mr. Brent Covert  
Phone: (512) 433-5320

Escrow Agent: CORRIDOR TITLE, LLC  
171 BENNETT LANE, STE. 200  
DACUPOENB SPRING, TEXAS 78620  
ATTN: PATRICK M. ROSE  
PHONE: (512) 894-0157

4.4 Captions. Captions contained in this Agreement are for reference and identification purposes only and shall not affect in any way the meaning or interpretation of any provision of this Agreement.

4.5 Amendment. This Agreement may not be amended except by the written agreement of all of the parties hereto.

4.6 Multiple Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed to be one and the same original.

4.7 Merger. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and shall not be varied, amended, or superseded except by the written agreement among the parties hereto.

4.8 Successors and Assigns. Except as set forth below, this Agreement may not be assigned by any Party hereto without the express written consent of the other Parties.

4.9 No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purpose for which it is given. No waiver by any Party hereto of any term or condition of this Agreement

shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

4.10 Governing Law and Venue. THIS AGREEMENT MUST BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS THEY APPLY TO CONTRACTS PERFORMED WITHIN THE STATE OF TEXAS AND WITHOUT REGARD TO ANY CHOICE OF LAW RULES OR PRINCIPLES TO THE CONTRARY. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS PERFORMABLE IN HAYS COUNTY, TEXAS AND HEREBY SUBMIT TO THE JURISDICTION OF THE COURTS OF HAYS COUNTY, TEXAS AND AGREE THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER.

4.11 Interpretation. As used in this Agreement, the term “including” means “including without limitation” and the term “days” means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

4.12 No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties expressly identified herein and signatories hereto, and neither Hays County, Forestar, nor the Escrow Agent intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than Hays County and Forestar.

4.13 Governmental Powers. By execution of this Agreement, Hays County does not waive or surrender any of its respective governmental powers, immunities or rights, except as specifically waived pursuant to this Agreement. Nothing in this section shall waive any claims, defenses or immunities that Hays County has with respect to suits against Hays County by persons or entities not a party to this Agreement.

*[Remainder of page intentionally left blank; execution pages follow.]*

IN WITNESS WHEREOF, each of the parties hereto has executed this Escrow Agreement as of the date and year first above written.

**HAYS COUNTY, TEXAS acting by and through its Commissioners Court:**

By: Bert Cobb

Date: 10-1-13

Name: BERT COBB, M.D.

Title: HAYS COUNTY JUDGE

**FORESTAR REAL ESTATE (USA) GROUP INC.:**

By: Brent Covert

Date: 10.3.13

Name: Brent Covert

Title: SVP

**ESCROW AGENT:**

COLLESON TITLE, LLC

By: Patrick M. Rose

Date: 10/4/13

Name: PATRICK M. ROSE

Title: PRESIDENT

**Exhibit A**

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Letter of Acceptance

Escrow Agent:

This Letter of Acceptance and the attached Opinion of the Attorney General of the State of Texas confirming Hays County's authority to enter into and carry out the transactions contemplated by the Water Reservation and Supply Agreement including the use of *ad valorem* tax revenues for payment of all costs arising from the Water Reservation and Supply Agreement (A.G. Confirmation) satisfy Section 2.1 (a) and (b) of the Escrow Agreement between Hays County and Forestar dated, October \_\_\_\_, 2013.

Please proceed with the Disbursement to Forestar per Section 2.2 and the Termination of Escrow per Section 2.3 (a) of the previously mentioned Escrow Agreement.

**HAYS COUNTY, TEXAS acting by and through its Commissioners Court:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FORESTAR REAL ESTATE (USA) GROUP INC.:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit B**

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Letter of Release

Escrow Agent:

This Letter of Release satisfies Section 2.3 (b) of the Escrow Agreement between Hays County and Forestar dated, October \_\_\_\_, 2013. By way of this letter, I am confirming that the Attorney General of the State of Texas has failed to confirm, within the Escrow Period, Hays County's authority to enter into and carry out the business contemplated by the Water Reservation and Supply Agreement, including the use of *ad valorem* tax revenues for payment of all costs arising from the Water Reservation and Supply Agreement.

- An A.G. Opinion has been issued and is attached hereto.
- No A.G. Opinion was issued within the Escrow Period designated by the Water Reservation and Supply Agreement.

Please proceed with the Termination of Escrow per Section 2.3 (b) of the previously mentioned Escrow Agreement.

**HAYS COUNTY, TEXAS acting by and through its Commissioners Court:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_