

LOST PINES GROUNDWATER CONSERVATION DISTRICT

**AN ORDER APPROVING A SETTLEMENT AGREEMENT
WITH FORESTAR (USA) REAL ESTATE GROUP, INC.**

WHEREAS, Forestar (USA) Real Estate Group, Inc. (“Forestar”) submitted applications for Operating and Transport Permits for 10 wells in Lee County seeking authorization to withdraw an aggregate of 45,000 acre-feet per year from the Simsboro aquifer to be used for municipal water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties (the “Applications”);

WHEREAS, on February 19, 2014, the Board of Directors (the “Board”) of the Lost Pines Groundwater Conservation District (the “District”) entered a final and appealable order granting the Applications in part and denying them in part; and

WHEREAS, on March 14, 2014, Forestar filed the lawsuit styled *Forestar (USA) Real Estate Group, Inc. v. Lost Pines Groundwater Conservation District, et al.*, Cause No. 15,369, in the 335th District Court of Lee County, Texas (“the Lawsuit”), appealing the Board’s decision and asserting various other causes of action against the District and the Board members; and

WHEREAS, at a meeting held on December 21, 2015, the Board of Directors (the “Board”) of the Lost Pines Groundwater Conservation District (the “District”) considered and approved a proposed Settlement Agreement between the District and Forestar (USA) Real Estate Group, Inc. setting out the terms and provisions of settlement of the Lawsuit (the “Settlement Agreement”); and

WHEREAS, Section 2 of the Settlement Agreement provides that the District will consider the issuance of revised Operating Permits and Transport Permits (the “Revised Permits”) for the 10 wells described in the Applications in the forms attached to the Settlement Agreement at Exhibit A; and

WHEREAS, at a meeting held on December 21, 2015, the Board considered written comments on the Revised Permits filed before the December 21, 2015 meeting and considered oral comments on the Revised Permits received at the December 21, 2015 meeting;

NOW THEREFORE, the Board APPROVES the issuance of the Revised Permits for the 10 wells described in the applications, in the forms attached hereto.

ISSUED:

President, Lost Pines Groundwater
Conservation District Board of Directors

Date: _____

SETTLEMENT AGREEMENT

This Settlement Agreement, dated to be effective as of the date of the last signature approving this Settlement Agreement (“the Effective Date”), is executed between Forestar Group (USA) Real Estate, Inc., a Delaware corporation (“Forestar”) and the Lost Pines Groundwater Conservation District, a special purpose reclamation district created by special legislative enactment pursuant to Article XVI, Section 59, of the Texas Constitution (“the District”) (each a “Party” and collectively “the Parties”).

RECITALS

A. Forestar submitted applications for Operating and Transport Permits for 10 wells in Lee County seeking authorization to withdraw an aggregate of 45,000 acre-feet per year from the Simsboro aquifer to be used for municipal water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties (the “Applications”);

B. After proper notice under District Rule 14.3.C, the Board of Directors of the District (the “Board”) held a public hearing on the Applications at 7:00 p.m. on March 20, 2013, at the Bastrop City Hall in Bastrop, Texas;

C. The Board did not receive a request for a contested case hearing on the Applications before the March 20 public hearing;

D. The Board heard comments on the Applications at the March 20 public hearing including the recommendation to grant the permits described in the Applications from both the Applicant and the District's General Manager; and

E. Aqua Water Supply Corporation filed a request for a contested case hearing on the Applications on April 10, 2013;

F. The City of Giddings filed a request for a contested case hearing on the Applications on May 7, 2013;

G. Environmental Stewardship filed a request for a contested case hearing and/or a request for party status in any contested case hearing on the Applications on May 8, 2013, and Andrew Meyer, Bette Brown, Rhonda Brown Hosea, Phillip A. Brown, Darwyn Hanna, Frank D. Brown, Madeline Brown

Stifflemire, and Walter Richard Brown filed requests for party status in any contested case hearing on the Applications on May 9, 2013;

H. The Board held a hearing on May 15, 2013 to determine whether the requests for contested case hearings filed by Aqua Water Supply Corporation and others described in Paragraphs E, F and G were timely filed under the District Rules;

I. The Board voted to deny all of the requests for contested case hearing on the ground that they were not timely filed under the District Rules;

J. The Board considered the Applications at its May 15, 2013 meeting and voted to grant the Applications, in part, subject to special conditions to be included in the Operating Permits and Transport Permits;

K. The Operating Permits and Transport Permits approved on May 15, 2013, were issued to Forestar by Order dated July 18, 2013;

L. On June 3, 2013, Forestar requested written findings and conclusions regarding the Board's decision on the Applications;

M. On July 17, 2013, the Board approved an order adopting findings and conclusions on the Applications;

N. On August 6, 2013, Forestar filed a motion for rehearing of the Board's decision on the Applications;

O. On November 19, 2013, the Board granted Forestar's motion for rehearing;

P. A rehearing on the Applications was held on December 16, 2013, at which the Board heard public comment, and arguments presented by Forestar and the General Manager;

Q. On January 15, 2014, the Board of Directors of the District voted to deny all requests to modify or amend the terms of the Operating Permits and Transport Permits issued on July 18, 2013, and to adopt the Findings of Fact and Conclusions of Law on Rehearing attached to the Board's January 15, 2014 Order;

R. Forestar timely filed a Second Motion for Rehearing on the Applications on February 4, 2014, in accordance with District Rule 14.6.A;

S. On February 19, 2014, the District denied Forestar's Second Motion for Rehearing and adopted Revised Findings of Fact and Conclusions of Law on Rehearing;

T. On March 14, 2014, Forestar filed the lawsuit styled *Forestar (USA) Real Estate Group, Inc. v. Lost Pines Groundwater Conservation District, et al.*, Cause No. 15,369, in the 335th District Court of Lee County, Texas ("the Lawsuit"). In the Lawsuit, Forestar appealed the District's decision on the Applications and asserted various other causes of action against the District and its Board members. The District and Board members denied Forestar's allegations and asserted counterclaims;

U. On May 14, 2015, Forestar filed a Motion to Nonsuit the cause of action against the District's Directors in their individual capacities;

V. On June 30, 2015, the District and Forestar engaged in a mediation under the direction of Mediator Tom Collins;

W. In an effort to avoid continued litigation, buy peace, and provide protections for the Simsboro Aquifer, other permittees and groundwater rights owners within the District, and to Forestar and Forestar's Landowners/Lessors and Customers, the Parties herein agreed to settle and resolve their disputes pursuant to the terms and conditions set forth in this Agreement and for the considerations recited herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in this Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Mutual Releases.

A. Release of the District: Forestar and its shareholders, employees, agents, affiliates and assigns (the "Forestar Releasing Parties"), hereby release and forever discharge the District and its officers, directors, employees, agents, affiliates and assigns (the "District Released Parties"), from any and all claims, rights, demands, setoffs, rights of offset, defenses, actions, causes of action

(including any statutory claims, constitutional claims, common law claims or claims at equity), damages, costs and expenses, contracts, promises, and obligations of any character whatsoever that the Forestar Releasing Parties ever had or now have or which have been asserted, or which could have been asserted, prior to the Effective Date, in the Lawsuit. Expressly excluded from this release is any claim for a breach of this Settlement Agreement or future decisions or actions of the Board or District.

B. Release of Forestar: the District and its officers, directors, employees, agents, affiliates and assigns (the "District Releasing Parties") hereby release and forever discharge Forestar and its shareholders, officers, directors, employees, agents, affiliates and assigns (the "Forestar Released Parties") from any and all claims, rights, demands, setoffs, rights of offset, defenses, actions, causes of action (including any statutory claims, constitutional claims, common law claims or claims at equity), damages, costs and expenses, contracts, promises, and obligations of any character whatsoever that the District Releasing Parties ever had or now have or which have been asserted, or which could have been asserted, prior to the Effective Date, in the Lawsuit. Expressly excluded from this release are any claim for a breach of this Settlement Agreement or any claim related to the future enforcement of any permit issued by the District to Forestar.

2. Consideration of Revised Permit. Within 30 days of the District Court's entry of an order remanding the Lawsuit to the District, the District will hold an open meeting in order to consider the revised permits attached as Exhibit A to this Settlement Agreement. In the event that the District does not issue an order approving the revised permits attached as Exhibit A (the "Permits") within 30 days of the District Court's entry of an order granting the Joint Motion to Remand, then this Settlement Agreement is void in its entirety.

3. Curtailment. If any future District-wide or designated management area temporary curtailment of groundwater production required by the District for permits issued by the District affects Forestar's pumping pursuant to the Permits, Forestar agrees to accept and will not contest temporary curtailment of its production at twice the rate of curtailment imposed upon other existing permittees in the District or the designated management area. This provision is not effective unless and until the District adopts a rule change related to the prospective curtailment of permits, including at the ratio of 2:1 which ratio will apply to both Forestar's Permits and to (i) all future permits and/or (ii) permit amendments that

increase the production amounts issued by the District after the Effective Date to other Permittees. Forestar will not oppose or appeal the adoption of any such rule.

4. Payment of the District's Attorney's Fees. Within 30 days of the District's issuance of an order approving and issuing to Forestar the Permits attached as Exhibit A to this Settlement Agreement, Forestar will pay the District \$164,095.17 in reimbursement of the District's attorney's fees incurred in defending the Lawsuit as evidenced by the affidavit from the District's counsel attached as Exhibit B.

5. Release with Prejudice of Claims in the Lawsuit, and Dismissal of the other Lawsuits, and Requests for Contested Case Hearings. Within 10 days of the issuance of the District's Order and the Permits described in Paragraph 4. above:

- A. The Parties will execute a final mutual release with prejudice of all claims in and/or related to the causes of action alleged, or that could have been alleged in the Lawsuit in the form attached as Exhibit C (the Lawsuit) to this Settlement Agreement.
- B. The Parties will cause their attorneys to file the Agreed Motion to Dismiss and Order of Dismissal in the forms attached as Exhibit D to this Settlement Agreement in Forestar's appeal of the Griffin Industries permit).
- C. Forestar will withdraw all of its currently pending requests for contested case hearing before the District. Forestar is precluded from contesting any future permit application on the grounds asserted in its requests for contested case hearings on the City of Bastrop's permit application or the Griffin Industries' permit application.
- D. It is the Parties' intent that Forestar withdraw and dismiss with prejudice all of its currently pending lawsuits, appeals and requests for contested case hearing. If the Parties later determine that they have failed to specifically name such a request or lawsuit pending on the Effective Date in this Settlement Agreement, Forestar will withdraw the request or seek dismissal of the previously unidentified pending contested case hearing request or lawsuit, as appropriate.

E. This provision is material to the Settlement, as is Forestar's receipt and ability to exercise and use the final Permits in the form and substance reflected in Exhibit A. The failure of Forestar to dismiss its claims and lawsuits, and withdraw any pending hearing requests and/or to withdraw its party status from any pending contested case covered by this Settlement Agreement, or the failure of Forestar to receive and enjoy the benefit of final, non-appealable Permits in the form attached hereto as Exhibit A, shall render this Settlement Agreement null and void.

6. Additional Covenants.

A. Further Assurances. Each of the Parties agrees to use and to cause all persons acting on its behalf to use all reasonable good faith efforts to take all actions and to do all things necessary, proper or advisable to consummate and implement the transactions contemplated hereby. Each of the Parties will, and will cause all persons acting on its behalf to, coordinate and cooperate with the other Parties in exchanging such information and supplying such assistance as may be reasonably requested by the other Parties in connection with the filings and other actions contemplated hereby. Each of the Parties shall, and shall cause all persons acting on its or his behalf to, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances, and take such other actions as shall be necessary, or otherwise reasonably requested by any of the other Parties, to confirm and assure the rights and obligations provided for in this Settlement Agreement and render effective the consummation of the transactions contemplated hereby.

B. Adaptive Management. Consistent with Special Conditions 5 and 7 of the Operating Permits, the Parties acknowledge that the Permits issued pursuant to this Agreement are "living" documents, and will be subject to review periodically, and possibly more often than the 5-year permit renewal process, based upon additional data and science obtained by the District from the Monitoring Well System.

7. Representations and Warranties. In connection with the execution of this Settlement Agreement, the Parties represent and warrant to each other as follows:

A. Each Party represents and warrants that no portion of any claim, right, demand, action, cause of action, or other matter purported to be released herein has been assigned, pledged, encumbered or transferred to any other person or entity.

B. In entering into this Settlement Agreement, each Party acknowledges and warrants that he or it has relied wholly upon its own judgment and knowledge, and has not been influenced to any extent whatsoever in making this Settlement Agreement by any representations or statements, except as set forth herein, regarding the other's liability or any person, firm, corporation, accountant, attorney, or other person firm, corporation, accountant, attorney, or other person representing or acting for the other Party.

C. Each Party represents and warrants that, in executing this Settlement Agreement, no reliance has been made on any promise or agreement that is not expressed in this Settlement Agreement and/or the Exhibits attached hereto and incorporated by reference for all purposes. Each Party further represents that, in executing this Settlement Agreement, no Party is relying upon any statement or representation of any attorney or agent of the Party being released.

D. Each Party has full power, right and authority, to enter into and perform its obligations under this Settlement Agreement.

E. This Settlement Agreement has been duly executed and delivered by each Party and constitutes the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

F. Neither the execution and delivery of this Settlement Agreement nor the performance by a Party of its obligations hereunder will violate the terms of any contract, agreement or commitment, or any law, regulation or rule by which such Party is bound or affected.

G. Each Party has been represented by legal counsel of its choice in connection with matters set forth herein.

H. The consideration recited in this Settlement Agreement is adequate to make this Settlement Agreement final and binding.

8. Miscellaneous.

A. Governing Law and Choice of Venue. This Settlement Agreement shall be governed by the law of the State of Texas; without regard to its principles of conflicts of laws. The exclusive venue for any dispute under or related to this Settlement Agreement shall be the state district courts of Lee County, Texas.

B. Waivers. The waiver of a breach of this Settlement Agreement or the failure of any Party to exercise any right under this Settlement Agreement shall in no way constitute waiver as to any future breach, whether similar or dissimilar in nature, or as to the exercise of any further right under this Settlement Agreement.

C. Notice. Any notice or other communication required or permitted to be given under this Settlement Agreement will be delivered through legal counsel for the respective Parties, identified below, and shall be in writing, will be delivered personally or by facsimile, mail or express delivery, postage prepaid, and will be deemed given upon actual delivery or, if mailed by registered or certified mail, on the third business day following deposit in the mails.

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