

**AMENDED AND RESTATED  
WATER PROVISION AGREEMENT**

This Amended and Restated Water Provision Agreement (this “Restated Agreement”) is entered into by and between the San Antonio Water System, a wholly owned municipal utility of the City of San Antonio (the “System”) and Forestar (USA) Real Estate Group Inc., a Delaware corporation (the “Developer”), together the “Parties.”

**Recitals**

**WHEREAS**, the Developer was formerly known as Lumbermen’s Investment Corporation, which changed its name effective April 24, 2006, to Forestar (USA) Real Estate Group Inc.; and

**WHEREAS**, the System and the Developer entered into that certain “Water Provision Agreement” executed December 9, 2002 (the “Original Agreement”) setting forth the terms and conditions pursuant to which the System agreed to furnish a water supply for irrigation of the golf course(s), golf learning center, and roadway medians within the boundaries of that certain real property more particularly described on Exhibit “A” attached hereto (the “Property”); and

**WHEREAS**, the Original Agreement provided for the conveyance of certain Trinity Aquifer groundwater wells and related facilities (the “Trinity Well Facilities”) by the Developer to the System, and further provided for the operation of the Trinity Well Facilities by the System for the provision of irrigation water by the System to the golf course(s), golf learning center, and roadway medians within the boundaries of the Property; and

**WHEREAS**, the Parties have subsequently determined that the quality and quantity of groundwater produced from the Trinity Well Facilities is not suitable for irrigation of golf course turf grasses, and the Parties desire to provide for an alternative supply of irrigation water to be made available for irrigation of the golf course(s) and golf learning center within the boundaries of the Property; and

**WHEREAS**, the System and the Developer desire to amend and restate the Original Agreement as provided for herein.

**NOW THEREFORE**, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the Parties hereto agree as follows:

**Article I.**  
**Purpose and Effect on Prior Agreements**

- 1.01** Purpose. The purpose of this Restated Agreement is to set forth the revised terms and conditions pursuant to which a supply of irrigation water will be made available to the golf course(s) and golf learning center within the boundaries of the Property.
- 1.02** Effect on Prior Agreements.
- (a) This Restated Agreement is in addition to that certain Water Service Agreement granted to Developer pursuant to the San Antonio Water System Board of Trustees Resolution No. 02-361 (the “Water Service Agreement”), which sets forth the terms and conditions pursuant to which the System will provide retail potable water service to the proposed residential and commercial development within the Property. The Water Service Agreement shall remain in effect for all purposes.
  - (b) This Restated Agreement, upon execution by the Parties and upon delivery to the System of an ordinance amending the Amended Services Agreement that recognizes and approves this Restated Agreement, shall amend and supersede the Original Agreement for all purposes.
  - (c) If the City of San Antonio has not approved an ordinance amending the Amended Services Agreement that recognizes and approves this Restated Agreement by October 31, 2006, then in that event this Restated Agreement shall be of no force or effect, and the Water Provision Agreement shall continue in full force and effect as if this Restated Agreement had never been signed.

**Article II.**  
**Ownership and Operation of Facilities**

- 2.01** Ownership of Trinity Well Facilities and Related Rights.
- (a) Subject to the terms and conditions of this Restated Agreement, the System hereby agrees to release the Developer of its obligation to convey to the System the Well Facilities and the Real Property Interests (as such terms are more particularly defined in the Original Agreement). The “Well Facilities” identified in the Original Agreement are referred to as the “Trinity Well Facilities” in this Restated Agreement.
  - (b) Except as otherwise provided in this Agreement, Developer may assign, convey, lease, transfer, or otherwise release its ownership interests in any or all of the Trinity Well Facilities, including all rights, permits, licenses or other authorizations to operate the Trinity Well Facilities without the prior written consent of the System. Anything to the contrary contained in the prior sentence notwithstanding, the Developer may not assign, convey,

lease, transfer, or otherwise release any of such rights to a public or private water utility without the prior written consent of the System. Any assignment, conveyance, lease, transfer, or release that is permitted by this section will be effective only after written notice to the System of such event and after the assignee, buyer, lessee, or other transferee agrees to assume, perform, and be subject to, all duties, obligations and restrictions relating to operation and use of the Trinity Well Facilities contained in paragraph 2.02 hereof. The System may require any such person or entity to execute an instrument evidencing its assumption of all terms, obligations, and restrictions set forth in paragraph 2.02. Any person's failure to execute such instrument shall render any purported transfer or assignment null and void. In addition to the foregoing, Developer, its successors and assigns shall have the right to assign any of its rights in the Trinity Well Facilities, upon written notice but without the consent of the System, to any lender providing financing to Developer, as security for any obligation of Developer, its successors or assigns. Upon foreclosure of any such security interest or deed of trust, such lender shall be subject to all duties, restrictions and obligations of the Developer herein.

**2.02** Operation of Trinity Well Facilities. The Trinity Well Facilities may be used only for irrigation of the golf course(s) and golf learning center within the Property, including storage of such water in lakes located within the Property prior to irrigation. With prior written consent of the System, the Trinity Well Facilities also may be used for other non-potable purposes within the Property. The water supply produced from the Trinity Well Facilities may not be used or transported outside the Property without the prior written consent of the System. The operation of the Trinity Well Facilities in a manner that directly adversely impacts (by quality or quantity) the production of groundwater by wells currently owned by the System in the vicinity of the Property (the "System Well Facilities") is prohibited. In the event that any operation or use of the Trinity Well Facilities by Developer directly adversely impacts the System Well Facilities, as determined by the System based on objective hydrological modeling or other empirical data, then the System shall provide written notice thereof to Developer of the specific manner in which Developer's operation of the Trinity Well Facilities is directly causing an adverse impact to the System Well Facilities. Upon receipt of such notice, the Developer shall discontinue use or operation of the Trinity Well Facilities until it has developed and implemented a mitigation plan, subject to the System's prior review and approval (not to be unreasonably withheld or delayed), that eliminates the direct adverse impact on the affected System Well Facilities.

**2.03** Golf Course Irrigation System. The Developer shall be solely responsible for design, construction, operation, ownership, repair, and maintenance of all facilities located within the Property that are designed or operated for purposes of irrigating the golf course(s) and golf course learning center (the "Golf Course Irrigation System").

**Article III.**  
**Irrigation Water**

**3.01 Irrigation Supply.**

- (a) Except as set forth in Section 3.05 below with respect to emergency water supply, the Developer hereby releases the System from any obligation to provide or make available a supply of water within the Property for irrigation of the golf course(s) and the golf learning center.
- (b) The System shall be the sole purveyor of retail potable water and wastewater services within the Property, including to all residential and commercial development, and irrigation of roadway medians, within the Property. The System shall provide such retail water service in accordance with the terms of the System's Water Service Agreement
- (c) The Developer hereby assumes sole responsibility for securing an alternative water supply source for irrigation of the golf course(s) (including maintenance of lake water levels for lakes on the Property that are used as reservoirs for golf course irrigation water) and golf learning center within the Property. The irrigation water supply secured by Developer must be non-potable, and may not consist of wastewater effluent (whether treated or not). The irrigation of the golf course(s) and golf learning center with potable water, as defined in 30 Tex. Admin. Code §291.3, is specifically prohibited, except as provided in Section 3.05 below. In addition to the Trinity Well Facilities, the System authorizes Developer to construct and operate an Edwards Aquifer groundwater production well or wells and related facilities to provide sources of irrigation water on the lands described in Exhibit "B" attached hereto; provided Developer obtains all permits and authorizations required by, and otherwise operates such groundwater production facilities in accordance with, all applicable regulatory requirements, including those set forth in Chapter 34 of the City Code of the City of San Antonio. Upon submission of a permit application and payment of the permit fee required by §34-572, City Code of Ordinances, the System will issue a well drilling permit or permits authorizing construction and drilling of such wells located in the area described in Exhibit "B". Developer specifically agrees that it shall be responsible for all costs and expenses associated with securing the alternative irrigation water supply and transporting the water supply to the Property for irrigation of the golf courses and golf learning center. By way of example and without limitation, Developer will be responsible for the following:
  - (i) securing all permits, rights, and other authorizations or approvals required for the alternative irrigation water supply;

(ii) payment of all costs of design, engineering, materials, labor, construction and inspection arising in connection with the construction of facilities required to produce, transport, store, pump and deliver the alternative irrigation water supply to the Golf Course Irrigation System (the “Offsite Irrigation Facilities”); and

(iii) payment of all costs in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as a part of the construction of the Offsite Irrigation Facilities. The System will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted by Developer in connection with the construction or operation of the Offsite Irrigation Facilities.

### **3.02 Offsite Irrigation Facilities.**

(a) General. The Developer shall be solely responsible for design, construction, operation, repair, ownership and maintenance of the Offsite Irrigation Facilities.

(b) Right of First Refusal. The Developer hereby grants to the System a non-revocable right of first refusal to purchase the Offsite Irrigation Facilities should Developer offer to sell the Offsite Irrigation Facilities to a public or private water utility, or to any other person or entity that will use the Offsite Irrigation Facilities for any purposes other than irrigation of the golf course(s) and golf learning center located within the Property (including storage within lakes prior to irrigation) (the “Authorized Purposes”). The Developer may not transfer, assign or convey all or any portion of the Offsite Irrigation Facilities to a public or private water utility, or to any other person or entity that will use the Offsite Irrigation Facilities for any purposes other than the Authorized Purposes without providing ninety (90) days prior written notice to the System, which notice shall specify the proposed terms and consideration for the transfer and conveyance. The System shall have the right to purchase the Offsite Irrigation Facilities under the same terms and consideration set forth in the written notice. In the event the System does not purchase the Offsite Irrigation Facilities during the 90 day period, then the Developer may proceed with the proposed transfer only in accordance with the terms and consideration set forth in the written notice. Upon completion of such transfer and assignment, the Developer shall provide a copy of the final transfer instruments and related agreements to the System. The Developer acknowledges and agrees that any purported transfer, conveyance or assignment of the Offsite Irrigation Facilities except in accordance with the foregoing procedures shall be null and void. In addition to the foregoing, Developer, its successors and assigns shall have the right to assign any of its rights in the Offsite Irrigation Facilities, upon written notice but without the

consent of the System, to any lender providing financing to Developer, as security for any obligation of Developer, its successors or assigns. Upon foreclosure of any such security interest or deed of trust, such lender shall be subject to all duties, restrictions and obligations of the Developer herein.

**3.03 Acquisition and Conveyance of EAA Permitted Water Rights.**

- (a) The Developer will acquire a minimum of 2000 acre-feet of Edwards Aquifer Authority (the “EAA”) permitted water rights (the “Irrigation Water Supply”) for use as irrigation water for the golf courses and for the golf learning center located on the Property. Not less than 1000 acre-feet of the Irrigation Water Supply shall be transferable initial regular permit EAA water rights purchased by Developer for subsequent sale and conveyance to the System, as hereinafter provided. The Offsite Irrigation Facilities shall produce and deliver the Irrigation Water Supply to the golf course irrigation system.
- (b) The period of time from the commencement of the installation and/or planting of turf grasses and related vegetation (the “Golf Course Vegetation”) within the golf courses and golf learning center until such time as the Golf Course Vegetation is established shall constitute the “Grow-In Period”. Developer agrees that the total Grow-In Period will not extend beyond a twenty four (24) month period from commencement of installation and/or planting any Golf Course Vegetation, subject to Force Majeure (as defined in Section 6.02). A Force Majeure event in the second year may extend the Grow-in Period one additional year, but may not extend the Grow-in Period beyond 36 total months. The Parties currently anticipate that the Grow-In Period will commence on or about on May 1, 2008 and will conclude on or about September 30, 2008. In the event of unforeseen delays or circumstances, or should Developer determine to establish the Golf Course Vegetation in phases, then the period for installation and establishment of the Golf Course Vegetation may extend into subsequent years, subject to all of the following restrictions:
  - (i) Under no circumstances shall the Grow-In Period for any Golf Course Vegetation extend beyond July 1, 2011, or in the case of Force Majeure (as defined in Section 6.02), beyond July 1, 2012;
  - (ii) In the event that Developer establishes the Golf Course Vegetation in phases, then the Grow-In Period for each phase of Golf Course Vegetation shall not exceed six (6) months; provided that in the event of Force Majeure (as defined in Section 6.02), the Grow-In Period for that phase may be extended for an additional six month period the immediately subsequent year; and

(iii) Each phase of Golf Course Vegetation shall be subject to the Drought Restriction Rules (as defined in Section 3.04 below) upon the expiration of the Grow-In Period for that phase of vegetation.

- (c) Within one hundred eighty (180) days after expiration of the Grow-In Period for all Golf Course Vegetation, the System shall provide written notice to the Developer of its intent to purchase EAA permitted water rights. The System may acquire the EAA permitted water rights in accordance with the competitive bidding process set forth in Chapter 252 of the Texas Local Government Code, or in accordance with any other procedures determined in the sole discretion of the System. Upon receipt of such notice, Developer shall make available for sale and conveyance to the System 1000 acre-feet of the Irrigation Water Supply (the "System Water Rights"). The System Water Rights must be EAA transferable initial regular permit water rights that may be withdrawn from the Edwards Aquifer at the System's existing groundwater pumping facilities for municipal purposes. The purchase price at which the Developer shall make available the System Water Rights for purchase by the System shall not be greater than the actual sum paid by Developer for acquisition of the Irrigation Water Supply. The Developer agrees to maintain and provide to the System documentation as necessary to demonstrate the costs of acquisition of the Irrigation Water Supply for purposes of confirming the appropriate purchase price to be paid by the System. The System shall be under no obligation to purchase the System Water Rights from Developer unless Developer submits the lowest bid, or the only bid, in response to an invitation by the System, or submits the lowest price for such water rights in response to any other procedure employed by the System to acquire such rights pursuant to this section.

### **3.04 Water Conservation and Drought Restrictions.**

- (a) With the sole exception of irrigation of the Golf Course Vegetation during the Grow-In Period (as applicable) or any variances approved by the System as provided in Section 3.04(c) below, all irrigation of the golf course(s) and golf learning center within the Property shall be subject to all water conservation measures and restrictions included within the following: (i) that certain "Amended and Restated Agreement For Services In Lieu Of Annexation" dated January 28, 2005 and entered into among the City of San Antonio; the Developer; and John Pierret, Craig Knight, Chuck Hudson, Gary McAtee, and Bobby Mann, all as representatives appointed by the Bexar County Commissioners Court (the "Amended Services Agreement"); (ii) the Golf Course Environmental Management Plan, as defined in the Amended Services Agreement; and (iii) all conservation and drought restriction provisions and requirements set forth in the City of San Antonio City Code, Sections 34-271 through 34-350 that apply to all golf courses within the corporate limits of the City

of San Antonio, as amended and superseded from time to time, provided that such amendments do not specifically apply only to the Property or the golf courses or golf learning center located upon the Property, or which have that effect (all of the above are collectively referred to as the “Drought Restriction Rules”).

- (b) During the Grow-in Period, the Golf Course Vegetation shall not be subject to the Drought Restriction Rules; provided, however, immediately upon establishment of any contiguous portion of the Golf Course Vegetation during the Grow-In Period, such established contiguous portion of the Golf Course Vegetation shall thereafter become subject to the Drought Restriction Rules for all purposes.
- (c) In the event of a conflict between the Drought Restriction Rules and the requirements of the Golf Course Environmental Management Plan (“EMP”), the Developer may request a variance from the Drought Restriction Rules. The System shall consider any such variance in good faith, taking into consideration the unique closed loop system required under the EMP, but shall be under no obligation to approve any such request.

**3.05 Emergency Water Supply.**

- (a) The System agrees to provide an emergency supply of irrigation water to Developer for irrigation of the golf course(s) and golf learning center located within the Property in accordance with the terms and conditions set forth in this Section 3.05.
- (b) For purposes of this Restated Agreement, an “emergency” shall mean an act of God, unforeseen circumstance, disaster, maintenance events, operational interruptions, and similar events that significantly impact the Developer’s ability to irrigate the golf course(s) and golf learning center with the alternative water supply identified under Section 3.01 above. The term shall not include drought conditions, lapse of groundwater production permit authorizations or other legal impediments, but may include replacement or construction of facilities or similar events.
- (c) In the event of an emergency event (as previously defined), the System will provide emergency water service in accordance with the following terms and procedures:
  - (i) the Developer must request in writing that the System provide emergency water service, which notice must specify the expected duration of the emergency event and an estimate of the quantity of emergency water supply sought by Developer from the System;
  - (ii) the System will use its reasonable efforts to respond to any such request within 24 hours of receipt, or if the request is made after 3 p.m. on

a regularly scheduled System work day, or on a weekend or holiday, the System will use reasonable efforts to respond to any such request by 5 p.m. of the next regularly scheduled System work day.

(iii) the availability of an emergency water supply is limited to 100 acre-feet per emergency event, except as otherwise agreed by the System in its sole and absolute discretion, and further limited by the quantity of EAA water supply temporarily transferred by the Developer to the System, as provided in Section 3.05(d) below. In the event that the Developer has no EAA permitted water rights available for temporary transfer to the System in accordance with Section 3.05(d) below for whatever reason, then the System shall have no obligation to provide an emergency water supply to the golf courses or golf learning center;

(iv) the emergency supply of water may only be used for irrigation of the golf course(s) and golf learning center within the Property and for no other purpose. The emergency water supply may not be sold or transferred to others;

(v) the provision of emergency water service is subject to a determination by the System that a bona fide emergency, as defined above, exists and that delivery of emergency water service to the Developer will not endanger the public health, safety, or welfare of System customers;

(vi) emergency water service will be provided only for the shorter of the following periods: (1) the reasonable duration of the emergency giving rise to the request for emergency water service; (2) the reasonable duration needed to repair damage to the Developer's facilities occasioned by such emergency; (3) the duration of the System's ability to provide emergency water service to the Developer as determined by the System; or (4) two weeks. In the event that the emergency exceeds the shortest of the foregoing periods, the Developer may make written request to the System to continue emergency water service beyond said initial period. The System may continue or resume such emergency water service for an additional period up to two (2) weeks, or such shorter period as the System shall determine appropriate and necessary, but only if the System determines that the emergency giving rise to the initial request for emergency service has not been abated, and that the Developer has exercised reasonable diligence in attempting to remove the disability giving rise to the initial request for emergency water service.

- (d) Within five (5) days after the commencement of delivery of an emergency water supply or within three (3) days after the conclusion of the emergency period, whichever is sooner, the Developer shall prepare and file at its sole cost and expense all appropriate applications to the EAA for temporary transfer of EAA permitted groundwater withdrawal

rights to the System in a quantity sufficient to provide for municipal use by the System a quantity of water equivalent to the amount of emergency water requested by Developer in the notice furnished to the System under Section 3.05(c)(i) above. The application shall authorize use of the groundwater by the System during the emergency period, as specified by Developer in its notice to the System, to ensure that Developer transfers to the System groundwater withdrawal rights equal to the quantity to be made available by the System during the emergency. Thereafter, Developer shall diligently prosecute each such application at its sole cost and expense until final approval is received. The Developer shall amend the application as necessary to reflect the actual quantity of water used and the duration of emergency water service provided by the System during the emergency. The transferred EAA withdrawal rights must authorize the System to withdraw groundwater from the Edwards Aquifer at the System's existing groundwater pumping facilities for municipal purposes, and shall be in a form reasonably approved by the System. If the Developer has more than three (3) applications for transfer of EAA withdrawal rights pending without approval, the System shall be under no obligation to make available an additional emergency water supply to the golf course(s) and golf learning center.

- (e) The emergency water supply will be made available by the System to the golf course(s) and golf learning center only in accordance with Ordinance 101684, adopted by the City Council of the City of San Antonio, as amended and superseded from time to time. In the event of a conflict between the terms of said ordinance and this Restated Agreement, the terms of this Restated Agreement shall prevail.
- (f) Developer will be responsible for construction of all facilities and equipment required to extend and connect the Golf Course Irrigation System to the System's water transmission system (collectively, the "Interconnect Facilities"), as follows:
- (g) Developer will promptly pay the costs of the Interconnect Facilities as they become due, including, without limitation, all costs of design, engineering, materials, labor, construction and inspection arising in connection with the Interconnect Facilities; all payments arising under any contracts entered into by Developer for the construction of the Interconnect Facilities; all costs incurred by Developer in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required as a part of the construction of the Interconnect Facilities; and all out-of-pocket expenses incurred in connection with the construction of the Interconnect Facilities. The System will not be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with in connection with the construction of the Interconnect Facilities.

- (i) Upon completion of construction of the Interconnect Facilities, the Developer will provide the System with a certificate of completion from the Developer's engineers certifying that the Interconnect Facilities have been completed in accordance with the approved plans and specifications.
  - (ii) All physical facilities to be constructed or acquired as a part of the Interconnect Facilities will be designed by a qualified registered professional engineer selected by Developer and approved by the System, which approval will not be unreasonably withheld or delayed. The design will be subject to the approval of the System, and shall comply with the System's design criteria.
  - (iii) Developer shall be responsible for securing all easements and real property interests required for the Interconnect Facilities. As specified by the System, the easements and real property interests shall be transferred and assigned to the System, at no cost to the System, in a form specified in advance by legal counsel to the System.
  - (iv) All construction contracts and other agreements related to the Interconnect Facilities will contain provisions to the effect that any contractor, materialman or other party thereto will look solely to Developer for payment of all sums coming due thereunder and that the System will have no obligation whatsoever to any such party.
  - (v) The construction contract and all change orders for the Interconnect Facilities will be subject to review and approval by the System, which shall not be unreasonably withheld
  - (vi) The Interconnect Facilities will be constructed in a good and workmanlike manner and all material used in such construction will be substantially free from defects and fit for their intended purpose. The System may have an on-site inspector inspect and approve the construction. The Developer shall not cover or allow to be covered any portion of the Interconnect Facilities until the System has approved the facilities. The Developer shall pay the System for inspections in accordance with the standard fees set forth in the System's rules and regulations.
  - (vii) Upon completion of construction of the Interconnect Facilities, the Developer agrees to furnish the District with computer files of the as-built or record drawings of each facility promptly upon completion thereof.
- (h) Rates, Fees and Charges.
- (i) With respect to all emergency irrigation water delivered to the golf course(s) and golf learning center, the System shall charge, and the Developer shall pay, the System's rates, fees, and charges for emergency

water service, as identified in Ordinance 101684, as amended or superseded from time to time.

(ii) The Developer shall pay for all water that is delivered through the emergency point(s) of delivery to the golf course(s) and golf learning center, as measured by the meter(s) installed at each point of delivery. Payments shall be made by the Developer to the System in accordance with the System's standard rules and procedures for its retail customers; provided, however, that all payments under this Restated Agreement shall be paid to the System on or before the due date specified on the invoice, or if no due date is specified, on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to the System's headquarters in San Antonio, Texas, upon prior arrangement. Payment must be received at the System's headquarters by the due date in order not to be considered past due or late. In the event payment is not received by the due date, the System shall be authorized to take any and all actions set forth under the City's Code of Ordinances and/or the System's rules for a customer who fails to timely pay for service.

## Article IV.

### Term

**4.01** Expiration of Term. This Restated Agreement shall remain in effect for an initial term of twenty five (25) years after its effective date, unless sooner terminated by mutual agreement of the Parties or otherwise according to the terms hereof. Upon the expiration of the initial term, this Restated Agreement shall automatically renew for two additional twenty five year terms, unless the Developer provides written notice to the System prior to the expiration of either such term that the Developer desires for this Restated Agreement to terminate upon the expiration of the term, in which event this Restated Agreement shall terminate upon the expiration of such term.

**4.02** Effect of Expiration or Termination.

- (a) Upon the expiration or termination of this Restated Agreement, the System and Developer shall negotiate in good faith the terms and conditions of a new agreement pursuant to which the System shall make available to the golf courses and golf learning center a supply of irrigation water; but in any event, the Developer, its successors or assigns, shall continue to own any rights it or they may have in the Trinity Well Facilities, and the Offsite Irrigation Facilities, including any water rights related thereto.
- (b) The following terms of this Restated Agreement shall survive the termination of this Agreement:
  - (i) The right of first refusal granted to the System with respect to the Offsite Irrigation Facilities set forth in Section 3.02(b);
  - (ii) The restrictions applicable to operation of the Trinity Well Facilities set forth in Section 2.02;
  - (iii) The restrictions regarding authorized sources of irrigation water for the golf course(s) and golf learning center set forth in Section 3.01(c);
  - (iv) The applicability of the Drought Restriction Rules as set forth in Section 3.04 of this Agreement; and
  - (v) The right of Developer, its successors and/or assigns, to use the Trinity Well Facilities, the Golf Course Irrigation System, the Edwards Aquifer groundwater production wells and related facilities that are described in Section 3.01 (c), and the Offsite Irrigation Facilities to produce and provide irrigation water for irrigation of the golf course(s) and the golf learning center located on the Property.

Developer specifically agrees that the System may record this Restated Agreement in the Real Property Records of Bexar County, Texas and that upon such recordation, the foregoing terms shall run with the Property; shall be binding upon Developers and all parties having any right, title or interest in or to the golf course(s) and golf learning center, the Offsite Irrigation Facilities, and/or the Trinity Well Facilities; their respective heirs, successor and assigns; and shall inure to the benefit of, and be enforceable by, the System. Each contract or deed conveying the golf course(s) and golf learning center, the Offsite Irrigation Facilities, and the Trinity Well Facilities shall conclusively be held to have been executed, delivered and accepted subject to these terms.

**Article V.**  
**Remedies**

- 5.01** Remedies. Should a Default occur (as defined in Section 5.02), after providing notice and an opportunity to cure in accordance with Section 5.02 below, the Parties shall each have the right to terminate this Restated Agreement or to enforce this Restated Agreement by specific performance, injunction, or any other remedy at law or in equity, in a court of competent jurisdiction including but not limited to an action for damages.
- 5.02** Notice and Opportunity to Cure. If either Party (referred to herein as the “Defaulting Party”) fails to comply with its obligations under this Restated Agreement or is otherwise in breach or default under this Restated Agreement (collectively, a “Default”), then the other Party (referred to herein as the “Non-Defaulting Party”) may not invoke any rights or remedies with respect to the Default until and unless: (i) the Non-Defaulting Party delivers to the Defaulting Party a written notice (the “Default Notice”) which specifies all of the particulars of the Default and specifies the actions necessary to cure the Default; and (ii) the Defaulting Party fails to cure, within ten (10) days after the Defaulting Party’s receipt of the Default Notice, any matters specified in the Default Notice which may be cured solely by the payment of money or the Defaulting Party fails to commence the cure of any matters specified in the Default Notice which cannot be cured solely by the payment of money within a reasonable period of time after the Defaulting Party’s receipt of the Default Notice or fails to thereafter pursue curative action with reasonable diligence to completion.
- 5.03** Notice of Default to Developer. Should Developer assign this Restated Agreement as permitted by Section 6.03, then in that event the System agrees to deliver to Developer, contemporaneously with the delivery to any Defaulting Party, any Default Notice and any second notice delivered to an assignee or Defaulting Party. Developer shall have the same right, but not the obligation, at its sole option and election to cure any Default for which notice is given pursuant to the requirements of this Article. The System shall accept the performance by Developer of actions that timely remedy a Default as curing any such default.
- 5.04** Waiver of Special and Consequential Damages. Notwithstanding any provision herein to the contrary, Developer waives all present and future claims for special

and consequential damages against the System arising from or related to this Restated Agreement. Such waiver shall survive any termination or expiration of this Restated Agreement.

**Article VI.**  
**Miscellaneous Provisions**

**6.01** Estoppel Certificates. Within thirty (30) days of written request by either Party, the other Party will execute and deliver to the requesting Party a statement certifying that: (a) this Restated Agreement is unmodified and in full force and effect or, if there have been modifications, that this Restated Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no known current uncured defaults under this Restated Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested. A Party's failure to deliver a requested certification within this 30-day period will conclusively be deemed to constitute a confirmation that this Restated Agreement is in full force without modification, and that there are no known uncured defaults on the part of the requesting Party. The President/Chief Executive Officer, or General Counsel, of the System, or their respective successors, shall be authorized to execute any requested certificate on behalf of the System.

**6.02** Force Majeure. In the event that any Party is rendered unable, wholly or in part, to perform any of its obligations under this Restated Agreement by force majeure, upon the provision of written notice which fully relates the particulars of the claimed force majeure, including but not limited to the dates on which it commenced and ceased or is expected to cease by the Party claiming force majeure to the other as soon as is reasonably practicable after the occurrence of the cause relied upon, the obligations of the Party claiming force majeure, to the extent they are affected by the force majeure, shall be suspended during the continuance of any inability of performance so caused. This Restated Agreement shall not be terminated by reason of any such cause but shall remain in full force and effect. Any Party rendered unable to fulfill any of its obligations under this Restated Agreement by reason of force majeure shall exercise the reasonable and timely diligence to remove such inability. The suspension of obligations of a Party to this Restated Agreement pursuant to this Section shall be added to the time specified in other provisions of this Restated Agreement for the purpose of calculating the date on which certain conditions of this Restated Agreement are to be satisfied. For purpose of this Restated Agreement, "force majeure" includes, but is not limited to, acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams that result in partial or entire failure of water supply, insofar as each of the foregoing or such other circumstances are beyond the reasonable control of the Party in question.

**6.03** Assignment. Upon prior written notice to the System, Developer may assign this Restated Agreement, in whole or in part without the prior written consent of the System, to any subsequent owner of the golf course(s) and learning center located within the Property. Anything to the contrary contained in the prior sentence notwithstanding, the Developer may not assign its rights or obligations hereunder, in whole or in part, to a public or private water utility without the prior written consent of the System. Upon assignment, the Developer shall be released from all further obligations hereunder, and the System shall be released of all further obligations to the Developer. Any assignment by Developer or its successors will be effective only after written notice to the System of the assignment and provided that the assignee agrees to assume and perform, and be subject to, all duties, restrictions and obligations of the Developer herein, including without limitation, those restrictions relating to the operation of the Offsite Irrigation Facilities, the Trinity Well Facilities and authorized uses of the water produced therefrom. The System may require any assignee to execute an instrument evidencing its assumption of all terms, conditions, restrictions, and obligations of this Restated Agreement, and failure to execute any such instrument shall render the purported transfer and assignment null and void for all purposes. Subject to the limitations contained herein, this Restated Agreement shall bind and inure to the benefit of the successors and assigns of the Parties. In addition to the foregoing, Developer, its successors and assigns shall have the right to assign its rights under this Agreement, upon written notice but without the consent of the System, to any lender providing financing to the Developer, as security for any obligation of Developer, its successors and/or assigns. Upon foreclosure of any such security interest or deed of trust, such lender shall be subject to all duties, restrictions and obligations of the Developer herein.

**6.04** Notices. All written notices required by the terms of this Restated Agreement shall be in writing and deposited in the United States mail addressed to such Party at the address set forth below:

**If to the Developer:**

Forestar (USA) Real Estate Group Inc.  
14755 Preston Road, Suite 710  
Dallas, Texas 75254  
Attention: President

And copy to:  
Forestar (USA) Real Estate Group Inc.  
1300 S. Mopac Expressway  
Austin, Texas 78746  
Attention: General Counsel

**If to the System:**

San Antonio Water System  
President/Chief Executive Officer  
P.O. Box 2449  
San Antonio, Texas 78298-2449

Each Party's address may be changed by such Party by notice in writing to the other Parties hereto.

- 6.05** Interpretation of Agreement. This Restated Agreement or any portion hereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion hereof. The use of the word "including" shall not be interpreted to mean a limitation of the terms following such word.
- 6.06** Severability. If for any reason, any one or more paragraphs of this Restated Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining paragraphs of the Restated Agreement as a whole. Moreover, in the event of any such judgment, the Parties agree to use their best efforts to revise this Restated Agreement as necessary to accomplish the original purposes and intent of the invalidated provision.
- 6.07** Entire Agreement. This Restated Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, understandings and arrangements, oral or written, between the Parties with respect to the subject matter hereof.
- 6.08** Cooperation. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Restated Agreement.
- 6.09** Governing Law. This Restated Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas. The sole venue for any disputes arising out of this Restated Agreement shall be a court of competent jurisdiction in Bexar County, Texas.
- 6.10** Execution in Counterparts. This Restated Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument.
- 6.11** Amendments and Waivers. This Restated Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. The waiver by any party hereto of a breach of any term or provision of this Restated Agreement shall not be construed as a waiver of any subsequent breach.

**6.12** Authority to Execute. The signatory below for the Developer has the authority to execute this Restated Agreement on behalf of the Developer. The System has the authority to enter into this Restated Agreement pursuant to a duly adopted resolution of its Board of Trustees and its President/Chief Executive Officer has the authority to execute this Restated Agreement.

**ACCEPTED AND AGREED** to in all things by the Parties.

**Forestar (USA) Real Estate Group Inc.**

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

**SAN ANTONIO WATER SYSTEM**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President/Chief Executive Officer

ACKNOWLEDGMENTS

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by  
\_\_\_\_\_, in his position as  
\_\_\_\_\_ of Forestar (USA) Real Estate Group  
Inc., a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by \_\_\_\_\_, in his position as President/Chief Executive Officer of the SAN ANTONIO WATER SYSTEM, a Texas municipal water utility, on behalf of said utility.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit A**  
**Description of Property**

## **Exhibit B**

### **Description of Offsite EAA Well Facilities Location**