

AN ORDINANCE 2014 - 10 - 16 - 0788

**AUTHORIZING THE THIRD AMENDMENT TO THE DECLARATION OF RESTRICTIVE COVENANTS ASSOCIATED WITH THE AMENDED AND RESTATED AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION BETWEEN THE CITY AND FORESTAR (USA) REAL ESTATE GROUP L.L.C. TO ALLOW FOR THE USE OF UP TO 43 IMPERVIOUS COVER CREDITS ON CIBOLO CANYON.**

\* \* \* \* \*

**WHEREAS**, the City approved an Agreement for Services in Lieu of Annexation (the “Agreement”) with Lumbermen’s Investment Corporation (now known as Forestar (USA) Real Estate Group L.L.C.) on October 24, 2002; and

**WHEREAS**, the Agreement provided terms and conditions under which the City would agree to not annex approximately 2,856 acres of property in Bexar County known as Cibolo Canyon; and

**WHEREAS**, a Declaration of Restrictive Covenants (the “Declaration”) was part of the Agreement and contained an impervious cover limitation which provided that the area of impervious cover on Cibolo Canyon would not exceed 25%; and

**WHEREAS**, the Declaration was later amended to increase the restriction to 15%; and

**WHEREAS**, City staff and Forestar representatives have agreed to the terms of an Impervious Cover Credit Agreement (the “ICC Agreement”) that would provide Forestar with 86 impervious cover credits to be used to mitigate impervious cover limitations on other projects in accordance with the terms and conditions of the ICC Agreement; and

**WHEREAS**, City staff has agreed to amend the Declaration to allow up to 43 impervious cover credits to be used on Cibolo Canyon so long as the application of such credits results in no greater than an impervious cover limitation of 16.5%; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The terms and conditions of the Third Amendment to the Declaration of Restrictive Covenants (the “Amendment”) with Forestar (USA) Real Estate Group L.L.C. are hereby approved.

**SECTION 2.** The City Manager or her designee is authorized to execute the Amendment in accordance with this Ordinance. A copy of the Amendment, in substantially final form, is set out as **Attachment I**. The final Amendment shall be filed with this Ordinance upon execution.

**SECTION 3.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

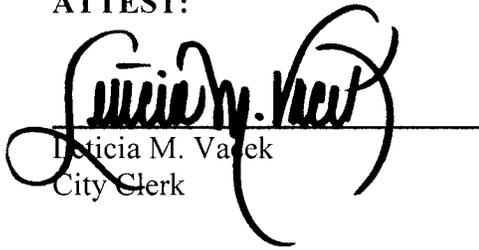
RR  
10/16/14  
Item No. 4C

PASSED AND APPROVED this 16<sup>th</sup> day of October, 2014.



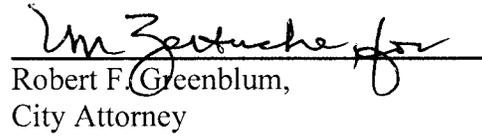
M A Y O R  
for Ivy R. Taylor

ATTEST:



Leticia M. Varek  
City Clerk

APPROVED AS TO FORM:



Robert F. Greenblum,  
City Attorney

<b>Agenda Item:</b>	<b>4C ( in consent vote: 4A, 4B, 4C )</b>
<b>Date:</b>	10/16/2014
<b>Time:</b>	10:43:37 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing the Third Amendment to the Declaration of Restrictive Covenants associated with the Amended and Restated Agreement for Services in Lieu of Annexation between the City and Forestar (USA) Real Estate Group L.L.C to allow for the use of up to 43 impervious cover credits on Cibolo Canyon.
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				x

## **ATTACHMENT I**

**THIRD AMENDMENT TO THE DECLARATION OF RESTRICTIVE  
COVENANTS**

This Third Amendment to the Declaration of Restrictive Covenants (this “Third Amendment”) is entered into by and between the CITY OF SAN ANTONIO (“City”), a municipal corporation governed by the laws of the State of Texas and FORESTAR (USA) REAL ESTATE GROUP, INC. (“Forestar”).

**RECITALS**

A. City and Forestar (formerly known as “Lumberman’s Investment Corporation) previously entered into a Declaration of Restrictive Covenants (“Declaration”) dated January 7, 2003, recorded in Volume 9766, Page 1682, Official Public Records of Bexar County, Texas, thereby imposing covenants, conditions and restrictions on 2,855.7473 acres of land, more or less, in Bexar County, Texas, as therein described (the “Land”).

B. Pursuant to the Amended and Restated Agreement in Lieu of Annexation by and among City, Forestar (then known as Lumbermen’s Investment Corporation), and John Pierret, Craig Knight, Chuck Hudson, Gary McAtee and Bobby Mann, as representatives appointed by the Bexar County Commissioners Court, dated January 28, 2005, and agreed to and acknowledged by CCRHD Limited Partnership (“CCRHD”), Forestar and CCRHD (as Declarants) and City amended the Declaration by First Amendment to Declaration of Restrictive Covenants dated February 24, 2005, recorded in Volume 11241, Page 1463, Official Public Records of Bexar County, Texas.

C. The Declaration was amended again by Forestar and CCRDH (as Declarants) and City as set forth in the Second Amendment to the Declaration of Restrictive Covenants dated as of November 9, 2006 and recorded in Volume 12511, Page 704, Official Public Records of Real Property of Bexar County, Texas.

D. CCRHD merged with and into Forestar, thereby vesting authority in Forestar to amend the Declaration of Restrictive Covenants without the consent of CCRHD.

E. Forestar (the “Declarant”) and City now seek to further amend certain terms and conditions of the Declaration. The Declaration provides that it may be amended or supplemented as to all or any portion of the Land pursuant to a written agreement containing such amendments or supplemental restrictive covenants, which shall be effective when signed by (i) Declarant or its successor in ownership of such portion of the Land to which the authority to amend this Declaration has been expressly assigned by Declarant, and (ii) the governing body or an authorized representative of City and recorded in the Official Records.

F. Forestar has not assigned its rights as Declarant under the Declaration.

G. The term “Declaration” means the Declaration of Restrictive Covenants, as amended. Each capitalized term used in this Third Amendment without definition herein shall have the meaning assigned to such term in the Declaration.

## AMENDMENT

NOW THEREFORE, the Declarant and City hereby agree and amend the Declaration by adding the following additional language to Section 1.3.3 of the Declaration:

Declarant shall be allowed to apply up to forty-three (43) impervious cover credits (each credit equal to one acre or 43,560 sq.ft.) to reduce the area of Impervious Cover determined under Section 1.3.1, above, provided that the calculation of the total percentage of Impervious Cover under this Section 1.3 without applying the impervious cover credits does not increase the percentage of Impervious Cover to more than sixteen and one-half percent (16.5%) of the total area of the Land. Furthermore, the allowance of the application of the 43 impervious cover credits shall not be deemed to have, in any way, authorized Declarant to breach any Governmental Rules, including (without limitation) the City's Tree Preservation Ordinance, as amended.

The conditions under which the 43 impervious cover credits may be used on the Land are fully described in the Impervious Cover Credit and Variance Agreement between the City and Forestar (Exhibit I to this Third Amendment).

All references to a fifteen-percent (15%) impervious cover restriction in the Agreement shall now be interpreted as follows:

- a) The Land is comprised of 2,856 acres;
- b) Fifteen-percent (15%) of the total number of acres comprising the Land is 428.4 acres (the "Current Restriction");
- c) Up to forty-three (43) additional acres may be added to the Current Restriction in accordance with the terms and conditions of the Impervious Cover Credit and Variance Agreement; and
- d) the resulting sum percentage, up to 16.5%, shall be the impervious cover restriction.

## MISCELLANEOUS

1. Effective Date. This Third Amendment shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this Third Amendment.
2. No Other Changes. Except as specifically set forth in this Third Amendment, all of the terms and conditions of the Declaration shall remain the same and are hereby ratified and confirmed. The Declaration shall continue in full force and effect and with this Third Amendment shall be read and construed as one instrument.
3. Choice of Law. This Third Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

4. Exhibits. All exhibits referenced in this Third Amendment are incorporated herein for all purposes.
5. Counterparts. This Third Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Third Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

**WITNESS HEREOF**, the parties hereto have executed in triplicate originals this Third Amendment on the \_\_\_\_ day of \_\_\_\_\_ 2014.

**CITY:**

**CITY OF SAN ANTONIO**

a municipal corporation

\_\_\_\_\_  
Sheryl L. Sculley  
City Manager

**ATTEST:**

\_\_\_\_\_  
Leticia Vacek  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert F. Greenblum  
City Attorney

**DECLARANTS:**

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

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

**ATTEST:**

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

**Exhibit I: Impervious Cover Credit Agreement**